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IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES AND THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA,

Petitioners,

vs.

THE REVEREND JOHN D. BARKER, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether California's retroactive imposition of an artificial and restrictive standard for resolving church property disputes so subverts the arrangements adopted by the Episcopal Church for the ownership and control of church property in reliance on prior California law as to interfere with the free exercise of religion and deprive the Episcopal Church of property without due process, in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution?

2. Whether the United States Constitution, as interpreted by prior decisions of this Court, prohibits the recognition of implied trusts affecting property held by religious organizations?

3. Whether the State of California can constitutionally deprive churches of the protections afforded to the property of secular charities by the state's charitable trust laws?

4. Whether the First and Fourteenth Amendments permit State courts to ignore entirely church canons, church doctrine and the clear intent of both the organizers of local parishes and the national church in resolving church property disputes simply because no express trust affecting church property can be found?

PARTIES

The Protestant Episcopal Church in the Diocese of Los Angeles was plaintiff and respondent in the Court of Appeal of the State of California. The Protestant Episcopal Church in the United States of America, an unincorporated association, and the Attorney General of the State of California were cross-defendants and respondents in the Court of Appeal. The Attorney General submitted a short Trial Statement at the time of trial but has not otherwise participated in the trial or appellate proceedings.

Defendants and appellants in the Court of Appeal were the parish corporations, their rectors and the members of their vestries, as indicated in the footnote.* The parishes will be referred to throughout this petition as St. Mary's, St. Matthias, Our Saviour and Holy Apostles.

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* (1) No. C 188907: The Rector, Wardens and Vestrymen of St. Mary of the Angels' Parish, in Hollywood, Los Angeles, California, a corporation, The Reverend John D. Barker, Spencer V. Bonanomi, Romer McCamy, Francis Dowd, Philip J. Mayfield, Jose Cedeno, Carol Maher, Otis Coontz, Ron Jernigan, Kenneth Maher and Forrest Wood; (2) No. C 189571: The Rector, Wardens and Vestrymen of St. Matthias Parish at Los Angeles, County of Los Angeles, a corporation, The Reverend William T. St. John Brown, Harold Abdo, James Sampley, David Bogna, Paul Caskey, George Knight, Sal Mariano, Neil Paquin, Christine Schulze and Robert North; (3) No. C 189572: The Rector, Wardens and Vestrymen of Church of Our Saviour, in Los Angeles, California, a corporation, The Reverend Forrest Ogden Miller, Robert R. Perkins, William R. Jackson, Thomas Gammage, Florence Gammage, Alexander Dillibe and James Hetlin; and; (4) No. C 190652: The Rector, Wardens and Vestrymen of The Church of The Holy Apostles in Glendale, California, a corporation, The Reverend George H. Clendenin, Edwin Bowes, Eugene Zimmer, Thomas Foreman, Donald Hewitt, Victor Maling, Paul Lambach, Charles Dahlquist, Donald E. Nist, Robert R. Lewis, Charles L. Minier, George W. Vreeland and John E. Booth.

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

Petitioners, The Protestant Episcopal Church in the United States of America (the "Episcopal Church") and The Protestant Episcopal Church in the Diocese of Los Angeles (the "Diocese") respectfully pray that a writ of *certiorari* issue to review the judgment and opinion of the Court of Appeal for the State of California, Second Appellate District, in these consolidated cases.

OPINIONS BELOW

The majority and dissenting opinions of the California Court of Appeal are published at 115 Cal. App. 3d 599 and 171 Cal. Rptr. 541, and an order modifying the majority opinion is published at 116 Cal. App. 3d 373b. The findings of fact, conclusions of law and judgment of

the trial court are not published. The Court of Appeal's order denying petitioners' request for a rehearing is not published, nor is the California Supreme Court's order denying petitioners' request for a hearing in that Court. All of these materials are reproduced in the Appendix.

JURISDICTION

The California Court of Appeal's opinion was filed on January 30, 1981. Petitioners timely requested a rehearing by that court, which request was denied on March 2, 1981. Petitioners then timely requested a hearing in the California Supreme Court, which request was denied on April 22, 1981. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment, Fifth Amendment, and Section 1 of the Fourteenth Amendment to the United States Constitution:

First Amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Fifth Amendment. "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment. "Section 1. . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case presents the issue left unresolved in *Jones v. Wolf*, 443 U.S. 595 (1979): Can a State radically change the law by which it resolves church property disputes and apply the new law retroactively to churches that structured their affairs in reliance on the prior law? The

California Court of Appeal did just that in this case, and to compound its error also held that this Court's prior decisions prohibit the recognition of implied trusts affecting church property. California alone of the numerous jurisdictions which have considered and resolved property disputes in the Episcopal Church since 1976* has failed to recognize and give effect to the measures adopted by the Episcopal Church for the control and management of church property.

For more than 85 years, California courts consistently followed this Court's decision in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872), and held that dissident members of a local church, even if they constitute a majority of the members, cannot divert to new and different purposes the property of a local church that is part of a larger, hierarchical church organization. The Episcopal Church and the Diocese of Los Angeles structured their arrangements for the ownership and control of property used by local congregations of the Church in reliance upon this body of decisional and statutory law.

With a stroke of the pen, however, a divided panel of the California Court of Appeal has purported to erase the precedent upon which the Episcopal Church and the Diocese relied. Although the Episcopal Church is undeniably hierarchical in structure and the organic documents of its parishes clearly recognize this fact, the Court of Appeal in this case held that seceding members of three Los Angeles parishes could retain Church property after their break with the Church. Under the guise of "neutral principles of law," the Court of Appeal majority rejected prior California law and substituted retroactively a requirement that facts constituting an express trust must exist before

* At its 1976 General Convention, the Episcopal Church authorized the ordination of women as priests and made certain changes in the Book of Common Prayer. These changes led a variety of dissident congregations to attempt to leave the Episcopal Church with Church property and engendered litigation throughout the country.

any limitation will be placed on the use of church property by the individuals currently in control of a local congregation. This decision so completely defeats the legitimate expectations of the Episcopal Church and its many loyal members who contributed property to the parishes over the years that it amounts to an interference with the free exercise of religion and a deprivation of important property rights without due process of law.

The Court of Appeal also refused to recognize any implied trust in favor of the Episcopal Church because it believed that the United States Constitution and prior decisions of this Court (especially *Jones v. Wolf, supra)* prohibit the recognition of implied trusts affecting property held by religious organizations. Not only is this perception of *Jones v. Wolf* and prior cases incorrect, but its anomalous consequence is that religious and secular charities in California will henceforth be regulated by quite different standards. Far from following this Court's directive to resolve church property disputes by applying "neutral principles of law, developed for use in all property disputes"* or "objective, well-established concepts of trust and property law familiar to lawyers and judges,"** the Court of Appeal majority did just the opposite, and for this additional reason interfered with the free exercise of religion by hierarchical churches in California.

These constitutional errors affect not only the Episcopal Church, but also numerous other church organizations and their members. The extent of the California court's departure from established constitutional norms will be demonstrated by a more detailed review of the organization and structure of the Episcopal Church, the evolution of

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* *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449 (1969).

** *Jones v. Wolf,* 443 U.S. 595, 603 (1979).

California law governing religious and charitable organizations, the history of the four Los Angeles parishes, and the proceedings below.

Organization and Structure of The Episcopal Church and the Diocese. The Episcopal Church is undeniably hierarchical in character. The trial court so found (App. 51a)*, and the Court of Appeal did not disturb this finding. The hierarchical character of the Church has been recognized by numerous other authorities. *See, e.g., Watson v. Jones, supra*, 80 U.S. at 729; *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 417 A.2d 19, 83 N.J. 572 (1980).**

The supreme governing authority of the Episcopal Church is its General Convention, which is composed of a House of Bishops and a House of Deputies. The General Convention of the Church meets in regular session every three years, and the business of the Church is managed between meetings by the Presiding Bishop, an Executive Council, and committees or commissions of the General Convention.

Geographically, the Episcopal Church is subdivided into 93 dioceses, of which the Diocese of Los Angeles is one. Each diocese is governed by a Diocesan Convention, which meets at least annually and which is composed of elected representatives from each parish and mission in the diocese. Between meetings of the Diocesan Convention, the business of the diocese is conducted by a Diocesan Bishop (who is elected by the Convention), by a Standing Committee elected by the Convention as the Bishop's council of advice, and by numerous other committees and commissions created by the Convention.

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* Citations to "App." are to the appendix to this petition.

** Case histories are not included in the text of this petition unless germane to the discussion. Full case histories appear in the table of authorities.

Both the Episcopal Church and the Diocese of Los Angeles have adopted Constitutions and Canons for the governance of the Church. The Constitutions and Canons of the national Church and the Diocese govern all aspects of church life, including both secular and religious matters. As detailed below, the Constitutions and Canons have always provided for strict parish allegiance to the national Church and Diocese, and for ultimate Diocesan control over parish property.

Congregations "belong" to the Diocese by becoming missions or parishes, and this process is governed by Canons IX and X of the Diocesan Canons. Congregations normally organize first as missions, under the direct supervision of the Diocesan Bishop, and apply for parish status when they have grown large enough to sustain themselves. In its application to the Diocesan Convention for parish status, a congregation must demonstrate that it is self-supporting and meet certain other requirements imposed by the Canons. Importantly, the application must include

> "a promise and declaration on the part of such communicants that the said Parish shall be forever held under, and that they shall conform to and be bound by, the Ecclesiastical Authority of the Bishop of Los Angeles, and of his successors in office, and the Constitution and Canons of the Church now known as the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles." Canon 10.01.

This requirement has been a part of the Diocesan Canons since at least 1905, before any of the parishes here involved were admitted into the Diocese.

After the Diocesan Convention approves a parish's application, the Canons provide that the parish "may incorporate under the laws of the State of California," so long as its by-laws

> "provide that the Constitution and Canons of the Protestant Episcopal Church in the United States of America,

and the Constitution and Canons of the said Church in the Diocese of Los Angeles, from time to time in effect, shall be incorporated in said By-Laws; and that in case of any conflict between said Constitution or Canons and said By-Laws, the former shall prevail over and in all respects supersede and to that extent effect the repeal of the said By-Laws." Canon 10.05.

In addition, § 39 of the Diocesan Constitution requires, as a condition for admission of a parish into union with the Diocesan Convention, that the parish present articles of incorporation "in which such Parish expressly accedes to the Constitution, Canons, doctrine, discipline and worship of the Protestant Episcopal Church in the United States of America, and to the Constitution and Canons of the Church in the Diocese of Los Angeles."

Once a parish has been admitted into union with the Diocese, the Diocesan Canons provide that property previously held for the parish by the Diocese or the Bishop shall be conveyed to the parish. Parish control over the property, however, is limited in three important respects by the Constitutions and Canons of the national Church and the Diocese by which, as noted above, all parishes must promise to be bound. First, the national Canons provide that no parish "shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part." Title I, Canon 6, § 3. This prohibition is echoed in the Canons of the Diocese of Los Angeles, which provide:

"Should any Parish desire to mortgage or otherwise encumber, to sell, exchange or otherwise dispose of all or any of its real property, or to acquire, except by gift, devise, or bequest, any real property subject to an existing encumbrance, or to assume an existing encumbrance, the written consent of the Bishop and Standing Committee must be obtained prior to any such sale,

exchange, mortgage, or other encumbrance, disposition or acquisition." Canon 10.07.

As the trial court found, Diocesan Canon 10.07 has been frequently and consistently enforced by the Diocese throughout its history. App. 52a.

Secondly, the Diocesan Canons provide that all property held by a parish in the Diocese shall revert to the Diocese upon dissolution of the parish:

> "All parish property is irrevocably dedicated for religious purposes, and upon the dissolution of a Parish, all properties, investments and assets shall not be distributed to any individual of the Parish but shall be conveyed to the Protestant Episcopal Church in the Diocese of Los Angeles, a corporation, to be held in trust by it or to be disposed of at its discretion." Canon 10.06.

Finally, the national Canons prescribe a comprehensive set of rules for the management of property by every parish. Among other things, those rules establish a fiscal year, require the maintenance of financial records, require annual audits by an independent public accountant, require bonds for treasurers and custodians of property, and require adequate insurance to be maintained. Pursuant to these rules, each parish in the Diocese of Los Angeles is required to submit an audited annual statistical and financial report to the Diocesan Convention.

Parishes of the Episcopal Church, in short, have been permitted to hold title to property only after acknowledging the hierarchical character of the Episcopal Church and agreeing to be bound by the Constitutions and Canons of the Episcopal Church and the Diocese. The Constitutions and Canons in turn forbid alienation or encumbrance of parish property without permission from the Diocese, and provide that property reverts to the Diocese upon dissolution of the parish. This scheme for property control and management was not established in a vacuum, but instead evolved in light of California law.

Evolution of California Law. The California Civil Code was adopted in 1872, the same year *Watson v. Jones* was decided. Section 593 of that Code authorized the incorporation of religious congregations as nonprofit corporations. The statute, however, made no mention of the relationship between local congregations and the general church organization of which those congregations were a part. Recognizing this deficiency, the Episcopal Diocese of California* resolved at its annual Convention in 1873 to appoint a committee to secure the passage of legislation "as shall recognize and provide for the exercise of the peculiar system of the Church, in regard to the form of parish organization and the manner of holding and managing property." Because of California's constitutional prohibition against the enactment of special legislation (now Cal. Const., Art. 4, § 25), however, this and subsequent committees were unable to procure legislation specially tailored for the Episcopal Church, similar to laws enacted by other states. (*E.g.*, Nev. Rev. Stat. § 82.295 *et seq.*; N.J. Stat. Ann. § 16:12-1 *et seq.*; N.Y. Religious Corporations Law §§ 40-47 (McKinney).)

In 1883 a committee reported to the Diocesan Convention its continued concern that, in the absence of remedial legislation, a California court might not recognize "the real hold that the Church, as a distinctive religious body, has upon the uses and benefits of the Property the legal title to which is vested in the various parishes, and institutions, individual Trustees within the Diocese." This committee recommended the passage of legislation that would either recognize the existence of hierarchical churches by permitting the Diocese to incorporate, or permit the parishes to evidence the hierarchical character of the Church in their organic documents. Both proposals were ultimately enacted.

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* The Episcopal Diocese of California was ultimately divided into several dioceses, including the Diocese of Los Angeles.

The first of these recommendations was implemented in 1887 by the enactment of § 604 of the California Civil Code. This new statute authorized the incorporation of "any church or other religious association in this state, composed of two or more constituent parishes, missions, congregations or societies, having a common convention, synod, council or other representative legislative body." The committee's second recommendation led ultimately to the enactment in 1897 of § 599 of the California Civil Code, which permitted nonprofit corporations to include in their articles of incorporation or bylaws a statement "[t]hat the rules, regulations or discipline, for the time being, of any specified religious denomination, society or church, shall always be part of their by-laws, ordinances, constitutions or articles of incorporation."

Sections 599 and 604 allowed church organizations to adopt a corporate structure that more nearly resembled the structure established by their internal rules and regulations. More importantly for present purposes, § 599 allowed local parishes to demonstrate the hierarchical character of the church by incorporating by reference in their articles of incorporation the rules, regulations or discipline of the parent church. The Episcopal Church in California promptly imposed such a requirement, and the required language was included in the articles of incorporation of each of the parishes involved in this litigation.

In the meantime, California courts were coming to grips with church property disputes, and their decisions consistently followed the hierarchical approach enunciated in *Watson v. Jones, supra.* In *Baker v. Ducker,* 79 Cal. 365, 21 Pac. 764 (1889), the California Supreme Court relied upon *Watson v. Jones* in holding that a majority of the members of the First Reformed Church in Stockton, who had decided to become Lutherans, could not divert Reformed Church property to their new faith. Again, in *Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 Pac. 841 (1897), the California Supreme Court reconfirmed its reliance on

the *Watson* rationale in resolving a property dispute in the Presbyterian Church. And in *Horsman v. Allen*, 129 Cal. 131, 61 Pac. 796 (1900), the California Supreme Court described *Watson* as the leading case on church property disputes "and as such conclusive."

The *Wheelock* decision explicitly resolved the question of whether incorporation of a local congregation confers upon the local congregation any measure of independence from the parent church. The answer was "no":

> "The Civil Code of this state (original section 595) expressly permits religious bodies to incorporate, but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. Notwithstanding incorporation the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church proper." 119 Cal. at 483.

After *Baker*, *Wheelock* and *Horsman*, and after adoption of the statutes described above, the Episcopal Church safely concluded that its interest in property held by individual parishes in the Diocese was adequately protected. Equally important, donors of property to Episcopal parishes could safely assume that their property would be used by the Episcopal Church and no other. Nothing happened during the next three-quarters of a century to disturb this assumption. In the years following *Baker*, *Wheelock* and *Horsman*, California courts continued routinely to apply the hierarchical church rationale of *Watson v. Jones* to resolve church property disputes arising in the United Lutheran Church of America [*First English Evangelical Lutheran Church v. Dysinger*, 120 Cal. App. 139, 6 P.2d 522 (1932)]; the Presbyterian Church [*Permanent Committee of Missions v. Pacific Synod of the Presbyterian Church*, 157 Cal. 105, 106 Pac. 395 (1909)]; and the Baptist Church [*Maxwell v. Brougher*, 99 Cal. App. 2d 824, 222 P.2d 910 (1950)].

Moreover, additional protection for the interest of hierarchical churches in property held by their constituent units was provided by a line of decisions commencing with *In re Los Angeles County Pioneer Society,* 40 Cal. 2d 852, 257 P.2d 1 (1953) and *Pacific Home v. County of Los Angeles,* 41 Cal. 2d 844, 264 P.2d 539 (1953). Those cases, and their progeny, consistently held that property contributed to a religious or secular charity is impressed with a trust for the charitable purposes defined in the charity's articles of incorporation or other organic documents. And, the cases specifically held that the trust could not be defeated by simply amending the articles of incorporation, as respondents tried to do here.

Thus, when this controversy arose in 1977, the Episcopal Church and the Diocese reasonably believed they had taken every necessary step to protect their interests, as trustees for members and congregations of the Episcopal Church generally, in property held by local parishes of the Church.* Their belief was vindicated by the trial court's decision in this case, which followed inevitably from the authorities discussed above. The Court of Appeal reached a different conclusion only by abandoning 85 years of settled California authority and retroactively imposing a different and far stricter standard.

History of the Four Los Angeles Parishes. The trial court's findings concerning the organization and history of the four parishes involved in this litigation were not disturbed by the Court of Appeal, which simply ignored the great majority of those facts. All four parishes complied with the canonical requirement for a promise and declaration at the time of their admission as parishes that

* The *Watson v. Jones* hierarchical church rationale was discussed with approval by a California Court of Appeal as recently as January 1977, in *Samoan Congregational Christian Church in the United States v. Samoan Congregational Christian Church of Oceanside,* 66 Cal. App. 3d 69, 135 Cal. Rptr. 793 (1977).

they would "forever be held under the Ecclesiastical Authority of the Bishop of Los Angeles, and of his successors in office, and in conformity with the Constitution and Canons of the Church now known as The Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles . . . ." App. 49a-50a.

All four parishes adopted articles of incorporation that clearly identified their corporate purposes as the organization and operation of parish congregations that were constituent units of the Episcopal Church in the Diocese of Los Angeles, subject to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the Diocese. The purpose clause of St. Mary's articles of incorporation is typical:

> "Second. That the purposes for which the said corporation is formed are:
>
> "(a) To establish and maintain a Parish, which shall form a constituent part of the Diocese of Los Angeles in that branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America; and so that the Constitution and Cannons [*sic*], Rules, Regulations, and Discipline of the Church in the United States of America, and the Constitutions and Cannons [*sic*] of the said Church in the Diocese of Los Angeles, for the time being, shall unless they be contrary to the laws of this State, always form a part of its By-Laws, ordinances, Constitution, and Articles of Incorporation, and prevail against anything therein contained that may appear repugnant to said Constitutions, Cannons [*sic*], Rules, Regulations, and Discipline.
>
> "(b) To hold all property of the association owned prior to incorporation and such as may be acquired hereafter in any manner; to transact all business relative thereto, and generally to do, perform and transact any and all acts and business, and to exercise any and all powers and privileges in any wise permitted or

granted by the laws of the State of California to Religious Corporations and required by or not contrary to the Constitution and Cannons [*sic*], Rules, Regulations, or Discipline of the said Church in the United States of America, and the Constitutions and Cannons [*sic*] of the said Church in the Diocese of Los Angeles."

The purpose clauses of the other parishes' articles are virtually identical or, in the case of Holy Apostles, even more explicit in declaring the subordinate character of the parish. App. 40a-48a.

Each of the four congregations remained continuously a mission or parish of the Episcopal Church, in union with the Diocese of Los Angeles, from the date of its organization until the present controversy arose in 1977. None of the parishes amended its articles of incorporation in any significant respect during that period of time. App. 41a, 43a, 46a & 48a. All four parishes routinely complied (except for two minor instances involving St. Matthias) with the requirement for Diocesan approval of the sale or encumbrance of parish property. App. 52a. Each parish also complied with the Canons concerning business methods, and regularly submitted annual statistical and financial reports to the Diocese before this controversy arose. App. 50a.

Proceedings Below. In January and February 1977 a majority of the then-current members of the four parishes voted to secede from the Episcopal Church and the Diocese and amended their articles of incorporation and bylaws to delete all references to the Episcopal Church and the Diocese. The dissidents refused to surrender possession of parish real estate and other property to loyal members of the parishes or to the Diocese, which filed these actions to recover the property in February 1977.*

* In addition, the clergyman-defendants at each of the four parishes were first inhibited from performing any sacerdotal functions and

The cases were consolidated for all purposes prior to trial. Following a two-week nonjury trial in May 1978 and lengthy post-trial proceedings, the Honorable J. Wesley Reed of the Los Angeles County Superior Court entered findings of fact, conclusions of law and judgment in favor of the Diocese and the Episcopal Church on September 6, 1978. App. 33a-58a. Judge Reed held that all property acquired by the parishes before the decision to secede (with the exception of certain items of personal property that had been given subject to specific limitations on their use) was impressed with a trust requiring the use of such property only for the benefit of members and congregations of the Episcopal Church. Judge Reed based his decision on two theories. First, he found that the Episcopal Church is hierarchical in character and that, under *Watson v. Jones* and more than 85 years of parallel California authority, the property of local congregations of a hierarchical church is impressed with a trust in favor of the parent church. Secondly, he found that the evidence before him and California charitable trust principles clearly demonstrated that the parish property was held subject to an implied trust for the Episcopal Church.

Defendants (respondents here) appealed. On January 30, 1981 a divided panel of the Court of Appeal for the Second Appellate District filed its opinion and order reversing the trial court's decision as to St. Mary's, St. Matthias and Our Saviour, and affirming as to Holy Apostles. App. 1a-32a. The Court of Appeal majority (Justices Fleming and Beach) characterized the case as one involving three distinct theories — hierarchical, implied trust and express trust. Relying upon *Jones v. Wolf,* 443 U.S. 595 (1979) and *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App. 3d 910, 152 Cal. Rptr. 854 (1979) (both of which were decided after the trial of

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then deposed from the ministry of the Episcopal Church under applicable Canon law.

this case), the majority concluded that "California has rejected the hierarchical theory as the basis for resolution of church property disputes and has adopted in its place neutral principles of law." App. 14a. Turning to the implied trust theory, the majority concluded that it represents a constitutionally impermissible approach to the resolution of church property disputes. App. 19a-20a. As authority for this proposition the majority cited this Court's decisions in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), and *Jones v. Wolf, supra.*

After rejecting hierarchy and implied trust, the Court of Appeal majority concluded that the outcome of church property disputes in California should depend upon the existence or nonexistence of an express trust affecting the property. App. 22a-23a. The majority reviewed the deeds to church property held by the parishes, the parish articles of incorporation and the Constitutions and Canons of the Episcopal Church and the Diocese at the time of each parish's incorporation, to determine whether an express trust existed here. The majority concluded that only the property of Holy Apostles is subject to such a trust. The majority attached particular significance to the fact that Holy Apostles (the most recently admitted and incorporated of the parishes) was incorporated after the adoption of California Corporations Code §§ 9203 and 9802, which refer to the incorporation of "subordinate" bodies of national societies;* to the use of the word "subordinate" in Holy Apostles' articles of incorporation; to the fact that Holy Apostles alone was incorporated after Canon 10.06 of the Diocesan Canons (requiring reverter of property to the Diocese upon dissolution of a parish) was adopted in 1958; and to the fact that only Holy Apostles echoed this

* The majority incorrectly states that California law was silent on the relationship between local and national bodies until 1939. *See* Civil Code §§ 599 and 604, discussed *supra.*

reverter clause in its articles of incorporation. App. 23a-29a.

In dissent, Justice Roth disagreed with the majority's conclusion that the hierarchical church theory of *Watson v. Jones* should be discarded. In Justice Roth's words, the "long coexistence" between the four parishes and petitioners "literally oozes the clear intention and ambition of each of the four parishes to severally achieve acceptance as a parish within the embrace of [the Episcopal Church] with full knowledge that such acceptance meant the subordination of each to the constitution and canons of [the Episcopal Church] and the transfer of the property of each to the Diocese of Los Angeles upon dissolution or other means of disaffiliation." App. 30a-31a. Justice Roth accordingly concluded that the hierarchical church rationale should have been used to decide the case or, in the alternative, that an express trust should have been found in all four cases. App. 31a.

Both petitioners and respondent Holy Apostles filed timely petitions for rehearing in the Court of Appeal. Those petitions were denied on March 2, 1981, with Justice Roth dissenting from denial of the petition filed by petitioners. App. 61a. Both petitioners and respondent Holy Apostles filed timely petitions for hearing in the California Supreme Court, which were denied without opinion on April 22, 1981. App. 62a.

Federal Questions Were Timely Raised. The constitutional questions that form the basis of this petition were timely raised by petitioners in the courts below. No constitutional infringement occurred, of course, until the Court of Appeal issued its January 30, 1981 opinion reversing the trial court's decision. In their petition for rehearing in that court, petitioners argued that retroactive abandonment of the *Watson v. Jones* hierarchical church rationale would violate the First, Fifth and Fourteenth Amendments to the United States Constitution. Petition for Rehearing, pp. 23-25. Petitioners also argued that

California was not constitutionally required under the decisions of this Court to abandon either the *Watson* approach or California's implied trust principles. *Id.*, pp. 20-23, 26-28. Petitioners raised these same arguments in their petition for hearing in the California Supreme Court. Petition for Hearing, pp. 14-20, 40-42 and 51-53.

REASONS FOR GRANTING THE WRIT

I. RETROACTIVE APPLICATION OF A NEW THEORY FOR RESOLVING CHURCH PROPERTY DISPUTES VIOLATES THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS.

In *Jones v. Wolf, supra,* this Court, while giving the states relatively wide latitude in their selection of methods for resolving church property disputes, expressly reserved the question whether a new theory for resolving such disputes could be applied retroactively. 443 U.S. at 606 n.4. This case squarely presents that question, and *certiorari* should be granted to resolve the issue.

California has followed hierarchical principles in resolving church property disputes since at least 1889. Starting with *Baker v. Ducker, supra,* in that year and continuing through the *Samoan Congregational Christian Church* case, *supra,* which was decided contemporaneously with the inception of this controversy in 1977, California courts have repeatedly reaffirmed California's adhesion to the hierarchical approach articulated by Justice Miller in *Watson v. Jones. See* cases discussed *supra,* pp. 10-11. Under the *Baker/Horsman* line of cases, the result in this case was clear. As Judge Reed held, and the Court of Appeal did not dispute, the Episcopal Church "is organized in an hierarchical fashion, as to both religious and temporal matters. Each of the Parishes was organized as a subordinate, integral part of the Episcopal Church and the Diocese." App. 56a. Each of the parishes declared prior to being allowed parish status that it would forever form an integral part of the Episcopal Church, and incorporated

this declaration in its articles of incorporation. Diocesan Canon 10.06, to which the articles of incorporation expressly subscribed, also provided that parish property would inure to the Episcopal Church upon dissolution of the parish. Although each parish's articles of incorporation could theoretically have included an express trust in favor of the Episcopal Church, an express trust was unnecessary under California law to preserve the Church's hierarchical structure.

The Court of Appeal in this case, however, interpreted this Court's opinion in *Jones v. Wolf* as allowing (or perhaps even requiring) California courts to abandon the hierarchical approach of *Baker/Horsman,* and to permit dissident members of a hierarchical church to leave the church with church property absent an *express* trust in favor of the general church. The Court believed that such an approach was mandated by the California Court of Appeal's 1979 decision in *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App. 3d 910, 152 Cal. Rptr. 854 (1970). As Justice Roth pointed out in dissent, it is far from clear that *Presbytery of Riverside* rejected the use of hierarchical principles in resolving church property disputes. Whether the use of hierarchical principles was first rejected in *Presbytery of Riverside* or this case, however, the change in California law occurred *after* this dispute arose and, indeed, after this case was tried. Retroactive application of the new standard in this case led to a result that is diametrically opposed to the intent of the Episcopal Church, the Diocese, and loyal church members who have contributed money and property to the Church over the years.

Although California may be free to change the law under which it resolves church property disputes, retroactive application of the new rules violates the First, Fifth and Fourteenth Amendments. Relying on California's adherence to hierarchical analysis, the Episcopal Church made no effort to create express trusts affecting the property held by its individual parishes but instead relied

upon its own organic documents and a series of promises and declarations in articles of incorporation and applications for parish status. These measures were entirely effective, under then-existing law, to accomplish the desired result. By changing the law in California without warning, the Court of Appeal has deprived the Episcopal Church of its property and, more importantly, has allowed dissidents to devote parish property to alternative non-Episcopal uses.*

Where the decision of a state court "constitutes a sudden change in state law, unpredictable in terms of the relevant precedents," the new law cannot be applied retroactively to property disputes that arose prior to the change. *Hughes v. Washington,* 389 U.S. 290, 295-98 (1967) (Stewart, J., concurring). "[T]he Due Process Clause of the Fourteenth Amendment forbids such confiscation [of property] by a State, no less through its courts than through its legislature, and no less when a taking is unintended than when it is deliberate." *Id.* at 298. *See also Muhlker v. New York & Harlem R.R.,* 197 U.S. 544 (1905); *Sotomura v. County of Hawaii,* 460 F. Supp. 473 (D. Ha. 1978). Here, California's rejection of the hierarchical approach that it had followed for more than 85 years was clearly "a sudden change in state law" that the Episcopal Church could not have predicted before these property disputes arose.

The problem is all the more acute when the law under which courts resolve *church* property disputes is unexpectedly changed and applied retroactively. The First and Fourteenth Amendments protect the free exercise of religion and accordingly prohibit a State from

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* One serious flaw in the majority opinion below is its failure to place *any* limits on the use of property controlled by the dissidents at St. Mary's, Our Saviour and St. Matthias. At the very least, the majority opinion sanctions diversion of that property to the Roman Catholic, Greek Catholic, Greek Orthodox or other "related" churches. App. 20a.

shifting ultimate control of church property from the church itself to a subordinate church body where the church has specified otherwise. *See Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952); *Northside Bible Church v. Goodson,* 387 F.2d 534, 537-38 (5th Cir. 1976); *Sustar v. Williams,* 263 So. 2d 537, 542-43 (Miss. 1972). The Constitution gives churches the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. at 116. The decision of the Court of Appeal in this case, however, has without any warning given local parishes total control over local property, even though the Episcopal Church had carefully structured itself under prior California law to provide for ultimate Diocesan control of all property.

II. THE COURT BELOW ERRED IN CONCLUDING THAT THE FIRST AND FOURTEENTH AMENDMENTS PRECLUDE RECOGNITION OF IMPLIED TRUSTS AFFECTING CHURCH PROPERTY.

The Court of Appeal compounded its error by misinterpreting this Court's opinion in *Jones v. Wolf, supra.* According to the Court of Appeal, this Court's opinions in *Jones* and prior cases preclude state courts from inquiring into whether local church property is invested with any *implied* trust in favor of the general church. Under the Court of Appeal's interpretation of *Jones,* only express trusts can constitutionally be recognized. This court therefore should also grant *certiorari* to correct this misinterpretation of its decisions and expressly sanction the use of implied trust principles in resolving church property disputes.

The trial court did not rely solely on hierarchical theory in reaching its decision, but also held that parish property was subject to an implied trust for the benefit of the Episcopal Church. Under well established charitable trust principles, property given to a California charity without an express limitation on its use is deemed given in trust for the charitable purposes of the organization. See cases

cited *supra*, p. 12. Judge Reed found that the charitable purposes of the four parishes here involved were clearly and unambiguously expressed in the articles of incorporation of each parish. Moreover, Judge Reed also found that extrinsic evidence, much of it offered by respondents at trial, confirmed the intention expressed in the parish articles of incorporation to organize and operate the parishes as integral, subordinate units of the Episcopal Church and the Diocese, subject to the rules and discipline of those entities. For these reasons, Judge Reed held that property contributed to and held by the four parishes before the vote to secede was subject to an implied trust for the benefit of members and congregations of the Episcopal Church. App. 56a-57a.

The Court of Appeal majority rejected this alternative conclusion on the ground that the First and Fourteenth Amendments, as interpreted by this Court, preclude courts from examining church papers and history for evidence of an implied trust. According to the Court of Appeal majority, such an examination would lead California courts into "the thicket of ecclesiastical controversy, for a court would be required to deduce and infer the nature of the general church and its implied authority over the property of its affiliated congregations." App. 19a-20a.

No opinion of this Court interpreting the First and Fourteenth Amendments, however, precludes examination for implied trusts. Although this Court has rejected the so-called "English theory" of implied trust "whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, *provided the general church had not 'substantially abandoned' the tenets of faith and practice as they existed at the time of affiliation,*" the "English theory" was rejected because it would have involved state courts in "religious controversies" over whether the general church had abandoned its original beliefs. *See Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Church*, 393 U.S. 440 (1969); *Jones v. Wolf*, *supra*, 443 U.S. at 599. Under the

approach taken by Judge Reed in this case, however, no question is raised as to the adherence of any body to particular religious doctrines. Instead, the only question is whether the individuals in control of the property are still using it to operate a parish of the Episcopal Church. The uncontradicted evidence here is that they are not.

This Court has frequently approved similar judicial inquiries into whether the persons exercising control over church property were in fact recognized as the persons entitled to control by church authorities. *See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Kedroff v. Saint Nicholas Cathedral, supra; Bouldin v. Alexander,* 82 U.S. (15 Wall.) 131 (1872); *Watson v. Jones, supra.* Here, the clergyman-respondents have been removed from the ministry of the Episcopal Church by competent Church authority — an action they did not challenge. They and the other respondents who have voluntarily withdrawn from the Church are no more entitled to continued possession of Church property than was Bishop Dionisije in the *Serbian Orthodox Diocese* case. The Court of Appeal erred not only in failing to reach this result, but also in its belief that it was precluded by the decisions of this Court from using an implied trust approach to do so.

An error in constitutional interpretation of this magnitude seriously interferes with the free exercise of religion by hierarchical churches in California. Not only are hierarchical churches and their members being deprived unfairly and without warning of property accumulated in reliance on prior law, but such churches will be required in the future to impose special limitations in the form of express trusts and deed restrictions, not required of other charities, to insure that church property is not diverted from its intended purpose. As Justice Powell observed in *Jones v. Wolf,* such a lengthy and formalistic process may well precipitate church property disputes rather than preventing them. 443 U.S. at 614 n.2 (Powell, J., dissenting).

III. THE COURT OF APPEAL'S DECISION UNCONSTITUTIONALLY DENIES CALIFORNIA CHURCHES EQUALITY OF TREATMENT WITH SECULAR CHARITIES.

As the California Attorney General urged in the trial court, implied trusts are frequently used to resolve all forms of charitable property disputes. Application of implied trust principles to the church property dispute in question here no more involved Judge Reed in "ecclesiastical questions" than does application of implied trust principles to property disputes involving non-religious charities. Indeed, by refusing to apply basic California charitable trust law to church disputes, the Court of Appeal denied to the Episcopal Church the equality of treatment demanded of state courts by *Watson v. Jones,* 80 U.S. at 714, and subsequent decisions.

In *Synanon Foundation, Inc. v. California,* 444 U.S. 1307 (1979), Justice Rehnquist cited *Jones v. Wolf* for the proposition that churches are not "entitled to different treatment than that accorded to other charitable trusts" under the First and Fourteenth Amendments. Conversely, churches cannot be singled out for special or discriminatory treatment. The Court of Appeal's requirement that an express trust must exist before limitations on the use of church property will be recognized will inevitably provide *less* protection for church property than for property contributed to other charities, and may discourage voluntary support of religious organizations. Donors of real property and people who make testamentary bequests may be able (assuming they are fully informed and properly advised) to ensure the use of their gifts for specific charitable purposes by creating express trusts. But such a standard offers no protection at all for small donors in the weekly collection plate, who do not as a practical matter have a similar ability to limit their gifts.

IV. THE FIRST AND FOURTEENTH AMENDMENTS REQUIRE STATE COURTS TO RECOGNIZE AND GIVE EFFECT TO THE INTENTIONS OF CHURCH BODIES IN RESOLVING CHURCH PROPERTY DISPUTES.

The ultimate objection to the Court of Appeal's decision is that the Court totally ignored the most important question it should have considered: "What was the intent of the parishes, the Diocese and the Episcopal Church as to disposition of parish property if the parishes' congregations ultimately abandoned the Episcopal Church?" *Certiorari* should be granted to correct this fundamental error.

As courts in numerous other states have recognized in decisions rendered during the last four years,* the Episcopal Church is organized in a hierarchical fashion with ultimate control over parish property in the hands of the

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* ARIZONA: *Diocese of Arizona v. Donovan* (Gila County, Ariz. Super. Ct. No. 20-232-B, Feb. 21, 1980); COLORADO: *Bishop & Diocese of Colorado v. Mote* (Denver County, Col. Dist. Ct. No. C-75959, Jan. 21, 1980); FLORIDA: *Duncan v. Watterson* (Palm Beach County, Fla. Cir. Ct. No. 77-3926, Feb. 21, 1979); NEVADA: *Protestant Episcopal Church in the Diocese of Nevada v. Tea* (Clark County, Nev. Dist. Ct. No. A165130, May 23, 1978), *aff'd sub nom., Tea v. Protestant Episcopal Church*, 610 P. 2d 182 (1980); NEW JERSEY: *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 391 A.2d 563, 161 N.J. Super. 230 (1978), *aff'd* 417 A.2d 19, 83 N.J. 572 (1980), *cert. denied*, 101 S. Ct. 954 (1981); OKLAHOMA: *St. David's Episcopal Church v. Parsons* (Oklahoma County, Okl. Dist. Ct. No. CJ-77-2940, Oct. 31, 1977); VIRGINIA: *Diocese of Southwestern Virginia v. Buhrman* (Clifton Forge, Va. Cir. Ct. No. 1746, Nov. 28, 1977), *appeal denied* (Va. 1978) and *Diocese of Southwestern Virginia v. Wykoff* (Amherst County, Va. Cir. Ct. Chancery No. 3748, Nov. 16, 1979). All of these cases were decided in favor of the Episcopal Church under circumstances nearly identical to the present case. Copies of these decisions were provided to the Court of Appeal in an appendix to petitioners' original brief on appeal in that court.

Diocese and the parent Church. Moreover, as Justice Roth noted, and the majority of the Court of Appeal panel did not deny, the evidence before Judge Reed overwhelmingly showed that all of the parishes sought acceptance as a parish "with full knowledge that such acceptance meant . . . the transfer of the property of each to the Diocese of Los Angeles upon dissolution or other means of disaffiliation." App. 31a. Indeed, the Diocesan Canons, to which each of the parishes explicitly subscribed in its articles of incorporation, explicitly provided that parish property would inure to the Diocese upon such dissolution.

The Court of Appeal majority found none of these factors admissible or relevant because of its misinterpretation of the "neutral principles" approach endorsed by this Court in *Jones v. Wolf, supra*: Neither the hierarchical nature of the Episcopal Church nor California's implied charitable trust principles could be considered under the First and Fourteenth Amendments, in the view of the Court of Appeal, because to do so would require the court "to deduce and infer the nature of the general church and its implied authority over the property of its affiliated congregations," an improper "ecclesiastical" inquiry. App. 19a-20a. Because Diocesan Canon 10.06 was adopted in 1958, subsequent to the adoption of all but Holy Apostles' articles of incorporation, the Court of Appeal majority held that the Canon was not binding on the other parishes and ignored it. App. 25a-27a.

In no case affirmed by this Court has a state court taken so constricted an approach to resolving church property disputes, or ignored so completely the intentions of the parties in interest. In both *Jones v. Wolf, supra,* and *Maryland & Virginia Eldership v. Church of God at Sharpsburg,* 396 U.S. 367 (1970), the state courts looked not only at the language of deeds, local church charters and state statutes, but also at all other relevant evidence including the rules of the general church concerning ownership and control of church property. 443 U.S. at 600, 603. The Court of Appeal's approach in this case, by contrast, "denies to the

courts relevant evidence as to the religious polity — that is, the form of governance — adopted by the church members" and thus thwarts the intentions of all elements of the church in violation of the First and Fourteenth Amendments. *Jones v. Wolf, supra,* 443 U.S. at 612-13 (Powell, J., dissenting). *See also* Comment, *Church Property Disputes: The Trend and the Alternative,* 31 Mercer L. Rev. 559, 577-78 (1980) (criticizing constricted use of "neutral principles" to resolve church property disputes).

The Court of Appeal's failure to accord any relevance to Canons of the Episcopal Church, except in the case of Holy Apostles, strikes especially at the heart of the First Amendment. A "careful examination" of the constitution and rules of the general church may frequently be necessary to determine the intention of church entities as to control of church property. *Jones v. Wolf, supra,* 443 U.S. at 619-20 (Powell, J., dissenting). Although Canon 10.06 was not adopted until 1958, all of the parishes were bound by it under Canon law and, as Judge Reed found, each parish gave implied consent by acquiescing in the Canon without complaint for almost 20 years. App. 56a.

As Justice Roth noted in dissenting from the majority's opinion in the Court of Appeal, the ultimate question in all church property disputes must be "the nature of the relationship of the parties and . . . what was contemplated by them in arriving at and agreeing upon that relationship." App. 31a. Both the hierarchical and implied trust approaches improperly rejected by the Court of Appeal effectively recognize and protect the intentions and legitimate expectations of parties at all levels of a hierarchical church. The Court of Appeal's refusal to apply those theories here was clear constitutional error.

V. CONCLUSION

For each of the foregoing reasons, a writ of *certiorari* should issue to review the judgment and opinion of the California Court of Appeal.

Respectfully submitted,

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No. 81-

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES AND THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA,

Petitioners,

vs.

THE REVEREND JOHN D. BARKER, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation; THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated association; and EVELLE J. YOUNGER, Attorney General for the State of California,
Plaintiffs and Respondents,

v.

THE REVEREND JOHN D. BARKER, SPENCER V. BONANOMI, ROMER MCCAMY, FRANCISE DOWD, PHILIP J. MAYFIELD, JOSE CEDENO, CAROL MAHER, OTIS COONTZ, RON JERNIGAN, and FOREST WOOD; and the RECTOR, WARDENS and VESTRYMEN OF ST. MARY OF THE ANGELS' PARISH, in Hollywood, Los Angeles, California, a corporation,
Defendants and Appellants.

2 Civil No. 59019

Jan. 30, 1981 (as modified March 2, 1981)

FLEMING, J. — The question: Do four Los Angeles churches which have seceded from their regional and national affiliation lose title to church property held in their own names? Yes, say the general church organizations with which the local churches have been heretofore affiliated. No, say the seceding local church organizations which hold title.

This litigation arose as a result of a doctrinal controversy within the general church involving ordination of women as priests and interpretation of the Nicene Creed. The four local church congregations, and others not involved in this litigation, dissatisfied with the resolution of the doctrinal controversy by the church's general convention held in 1976, withdrew their affiliation from the regional and national church bodies, but retained possession and control over local church property standing in the name of the local church organizations. Plaintiffs, the Protestant Episcopal Church in the Diocese of Los Angeles, a California corporation (Diocese), and the Protestant Episcopal Church in the United States of America, an unincorporated association (PECUSA), brought these four separate actions to obtain title and possession of the property of the seceding church organizations. The principal defendants are four local membership corporations created under the California nonprofit corporation law on the dates indicated to operate parish churches — St. Matthias (1910), St. Mary's (1930), Our Saviour (1944), and Holy Apostles (1963).[1] In a consolidated trial of the four actions the trial court ruled in favor of

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[1] More formally, the church bodies (parishes), which, with their respective rectors (presidents) and vestrymen (directors), constitute the defendants herein, are named the Rector, Wardens and Vestrymen of St. Matthias Parish at Los Angeles, California (St. Matthias), the Rector, Wardens and Vestrymen of St. Mary of the Angels' Parish, in Hollywood, Los Angeles, California, (St. Mary's), the Rector, Wardens, and Vestrymen of Church of Our Saviour, in Los Angeles, California (Our Saviour), and the Rector, Wardens and Vestrymen of the Church of the Holy Apostles in Glendale, California (Holy Apostles).

plaintiffs, determining that property in the name of the four local churches was held by defendant corporations for the benefit of the members of the Diocese and PECUSA. The court's determination was grounded on theories of hierarchy and implied trust. Defendants, the local church organizations, have appealed.

The issue, simply put, is whether the local church organizations are entitled to keep church property standing in their own names, or whether they must surrender it to the regional and national church organizations as property held in trust for the general church membership.

Our starting point is the presumption that the owner of legal title to property is presumed to be the owner of the full beneficial title to the property, a presumption rebuttable only by clear and convincing proof to the contrary. (Evid. Code, § 662; Civ. Code, § 1105.) Since the disputed properties are held in the names of the local church organizations, the latter presumptively own the full beneficial interest in these properties, unless the church organizations succeed in establishing their claims to ownership and possession by clear and convincing evidence. This they purport to have done through three alternative theories, the validity of any one of which, they assert, entitles them to the beneficial interest in the disputed church properties:

(a) Hierarchical theory.

(b) Implied trust theory.

(c) Express trust theory.

The *hierarchical theory* asserts that when a general church has been organized and operated as a closely knit organization, when a hierarchical chain of command controls decisions in both ecclesiastical and temporal matters, and when there are superior ecclesiastical authorities which retain ultimate power of disposition, the decisions of such ecclesiastical authorities (tribunals or individuals) control the disposition of church property. Under the

hierarchical theory centralized church control over church property supersedes civil law disposition of church property. Under a hierarchical system of church governance the canons and rules of the general church override any disposition of local church property mandated by state law.

The *implied trust theory* asserts that a local church accepts and holds local church property for the benefit of the entire membership of the general church. A local church affiliated with a general church is impliedly bound to hold its church property as a charitable trust for the benefit of the specific religious use in effect at the time it acquired the property. If thereafter the local church attempts to apply the church property to a different religious use, it cannot do so, and the property reverts to a trustee who must apply it to its original religious purpose. Specifically, plaintiffs argue the existence of an implied trust to benefit the entire membership of the general church, for whom they are the appropriate and ultimate trustees.

The *express trust theory* relies on title deeds, articles of incorporation, canons and rules of the organizations concerned and statutes, to establish that a local church holds property under an express trust for the benefit of the general church membership as embodied in its regional and national organizations.

Before discussing these theories, we review the relevant facts of the cause.

I FACTS

The Protestant Episcopal Church in the United States of America (PECUSA), organized in 1789, was the product of secession of the Anglican church in the colonies from the Church of England, the latter church itself being the product of secession from the Church of Rome in 1534. (The court takes judicial notice that the seceding churches in the two earlier secessions took their property with them.) PECUSA, an unincorporated association, is governed by a general convention and a presiding bishop.

Affiliated with it are 93 dioceses, each of which is governed by a diocesan convention and a bishop. A diocese in turn operates missions and admits parish churches to constituent membership in the diocese and PECUSA. Normally, the property of a mission is held in the name and under the control of the diocese and its bishop, while the property of a parish is held in the name and under the control of the parish church. In California the parish church is usually organized as a nonprofit membership corporation run by an elected board of vestrymen which acts as a board of directors. The rector of the parish acts as the president of the church corporation. The communicants of the parish congregation are the members of the church corporation.

We review briefly the organizational history of the four defendant churches:

1. *St. Matthias.* St. Matthias church was organized as a diocesan mission in 1905 and admitted to parish membership in the Diocese in 1907. Title to its property has always been held in the name of the local church organization. In 1910 St. Matthias was incorporated as a non-profit membership corporation. Its articles of incorporation declared the parish would form a constituent part of the Diocese in that branch of the Holy Catholic Church now known as PECUSA, and that the constitution, canons, and discipline of the Diocese and PECUSA would always form part of its articles and bylaws. The articles established no specific limitation or restriction on the holding or disposition of property by St. Matthias.

Over the years no moneys were given by the Diocese or PECUSA to St. Matthias. On the contrary, the flow of funds was in the other direction, and during the period of its affiliation St. Matthias contributed approximately $127,000 to the Diocese.

The members of the church corporation were its congregation, which elected its board of directors (vestry), which in turn elected its president (rector). The church's

temporal affairs were run by its vestry, but transfers and encumbrances of real property and the selection of rectors were subject to approval by the Diocese. The church corporation had complete legal autonomy in its affairs, and as a membership corporation it was authorized to amend its articles of incorporation on approval of its board of directors and its membership. However, as a constituent part of the Diocese and PECUSA it was required to conform to the constitution, canons, and church discipline of the Diocese and PECUSA. At the time of St. Matthias' admission to parish status in 1907 the Diocesan canons required that on admission of a parish its communicants promise that the parish would be forever bound by the ecclesiastical authority of the bishop of Los Angeles and PECUSA, that the constitution and canons of the Diocese and PECUSA would be incorporated in the parish's by-laws, that the parish would accede to the constitution, canons, doctrine, and worship of PECUSA and the constitution and canons of the Diocese.

In 1958 Diocesan Canon 10.06 was adopted, which declares that on dissolution of a parish its property shall be conveyed to the Diocese.

In January 1977 the vestry of St. Matthias voted, and its membership approved, an amendment to St. Matthias' articles of incorporation deleting all references to the Diocese and to the Holy Catholic Church known as PECUSA, and identifying its corporate purpose as the maintenance of a parish as a constituent part of the Holy Catholic Church in the Anglican tradition. In February 1977 representatives of St. Matthias advised the Diocese and PECUSA that St. Matthias was withdrawing its affiliation and severing its ecclesiastical connection with the regional and national church.

2. *St. Mary's Church.* St. Mary's Church was admitted as a mission in 1919, incorporated under California law in December 1930, and admitted to parish status in the Diocese in January 1931. Title to its property is held in the

name of the local church organization. Its articles of incorporation declared that the parish would form a constituent part of the Diocese in that branch of the Holy Catholic Church known as PECUSA and that the constitutions, canons, and discipline of the Diocese and PECUSA would always form part of its bylaws and articles. The corporation was authorized to hold property and transact business in a manner not contrary to the constitutions, canons, and discipline of the Diocese and PECUSA. The operation of the church corporation was similar to that of St. Matthias, as were the relevant canons of the Diocese and their amendment in 1958.

Neither the Diocese nor PECUSA contributed money to St. Mary's or toward the purchase of its real property, and the flow of funds was from St. Mary's to the Diocese, a flow amounting to $161,000 during the years 1920 to 1974.

In January 1977 the vestry and the members of the corporation amended St. Mary's articles of incorporation by deleting all references to the Diocese and PECUSA, and identifying its corporate purpose as the maintenance of a parish as a constituent part of the Holy Catholic Church in the Anglican tradition. In February 1977 their representatives advised the Diocese and PECUSA that St. Mary's was withdrawing its affiliation and severing its ecclesiastical connection with the regional and national church.

3. *Our Saviour Church.* Our Saviour Church was organized as a mission in 1930, and during its missionary period title to its real property remained in the name of the bishop of the Diocese. In 1944-1945 it filed articles of incorporation, became a parish, and acquired title to its church property. Like the previously mentioned churches, its articles of incorporation declared that its purpose was to establish a parish as a constituent part of the Diocese in that branch of the Holy Catholic Church now known as PECUSA, to hold property, and to transact business and encumber or alienate property in accordance with the

constitutions and canons of the Diocese. As did the articles of the other churches, its articles declared that the constitution, canons, and discipline of the Diocese and PECUSA would always form part of its bylaws and articles of incorporation.

Our Saviour made regular annual contributions to the Diocese amounting over the years to $51,000.

In January 1977 the vestry and its membership approved an amendment to the articles of incorporation to delete all references to the Diocese and PECUSA and to identify its corporate purpose as the maintenance of a parish as a constituent part of the Holy Catholic Church in the Anglican tradition. Like the other churches, Our Saviour advised the Diocese and PECUSA it was withdrawing its affiliation and severing its ecclesiastical connection with the regional and national church bodies.

4. *Holy Apostles Church.* This church was organized as a mission in 1936 and continued as such until it became a parish in 1956. Thereafter it was incorporated in 1963. Title to its property is held in the name of the local church organization.

Holy Apostles' articles of incorporation, adopted in 1963, are the most recent of the four with which we deal, and they differ in significant respects from those of the three churches incorporated earlier. In addition to the stated purpose of operating a parish church as a constituent part of that branch of the Holy Catholic Church known since 1789 as PECUSA, the articles also specifically identify Holy Apostles Church as a *subordinate body* and integral unit of PECUSA and as a *subordinate body* of the Diocese within the meaning of Corporations Code sections 9203 and 9802,[2] sections which defined a subordinate body

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[2] Section 9203: "A nonprofit corporation may be formed for the purpose of incorporating any subordinate body instituted or erected under the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, labor union, foundation, federation, or any other society, organization, or association.

of a national body, and provided that on revocation or surrender of the charter of a subordinate body its assets shall be distributed to the national body. Again unlike the articles of incorporation of the three other churches, the articles of Holy Apostles declare that the property of the corporation is irrevocably dedicated to religious or charitable purposes, and that on liquidation or dissolution its property will inure to the benefit of a fund organized and operated for religious or charitable purposes by the Diocese.

One further point differentiates Holy Apostles from the three other churches. Holy Apostles is the only church incorporated subsequent to the adoption in 1958 of Diocesan Canon 10.06, which declares that on dissolution of a parish its property shall be conveyed to the Diocese.

In January 1977 the vestry voted, and the membership approved, an amendment to the articles of incorporation similar to that adopted by the other three churches. By resolution in February 1977 the congregation of Holy Apostles disassociated itself from the Diocese and PECUSA, declaring that the latter had become schismatic from the Holy Church.

The fact that the head or national body is unincorporated does not prevent the incorporation of the subordinate body.

"The rules governing the incorporation and operation of unincorporated associations govern the incorporation of any subordinate body.

"The seal of the subordinate body shall be its corporate seal."

Section 9802: "Whenever the charter of a subordinate body incorporated pursuant to this part is surrendered to, taken away, or revoked by the head or national body granting it, the subordinate body shall dissolve. The subordinate body shall pay its debts and obligations or make adequate provision therefor. The subordinate body may collect obligations owed to it and may sell property which is not designed for the exclusive use of the organization. The subordinate body shall then deliver any remaining property or obligations owed to it and any remaining proceeds of the sale of property to the head or national body, to be disposed of in accordance with the laws of the head or national body."

(Eff. Jan. 1. 1980, these sections were recodified as part of the Nonprofit Corporation Law. See Corp. Code, § 5000 et. seq.)

In sum, the articles of incorporation of Holy Apostles differ significantly from those of the three other churches, in that the church is specifically identified as a subordinate body of a national body, in that specific reference is made to those provisions of the Corporations Code which provide that on surrender or revocation of the charter of a subordinate body the latter shall be dissolved and its property delivered to the national body to be disposed of in accordance with the laws of the national body, and in that specific provision is made that on dissolution the church's property will inure to the benefit of the Diocese.[3]

On the basis of the foregoing facts, the trial court awarded title and possession of the property of the four local churches to the Diocese and PECUSA on two theories: (a) the Protestant Episcopal church is organized in hierarchical fashion, and the decisions of the church hierarchy control both ecclesiastical matters and disposition of local church property, which decisions are binding on the courts; (b) the property of the four local churches was impliedly held as a charitable trust for the benefit of members of the Diocese and PECUSA, i.e., the general church organizations. (Presumably, the general church organizations in turn would hold the property for the benefit of their general communicants.) The court rejected the theory of express trust.

On appeal, defendants-appellants, who are the local churches, argue against both the hierarchical and implied trust theories and assert that the cause should have been resolved on the basis of express trust by use of neutral principles of law. Plaintiffs-respondents argue that the judgment of the trial court is sustainable both on implied

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[3] Subsequent to the filing of these actions the Corporations Code was further amended (effective, Jan. 1, 1980) by adoption of a comprehensive Nonprofit Religious Corporation Law (Corp. Code, § 9110 et seq.), which provides that articles of incorporation of a subordinate corporation may require dissolution on the loss of its charter and may require distribution of its assets to the head organization (Corp. Code, § 9132).

trust theory and on hierarchical theory, and sustainable as well, although the trial court found to the contrary, on the theory of express trust.

II HIERARCHICAL THEORY

The leading American case setting out the theory of hierarchy is *Watson* v. *Jones* (1872) 80 U.S. (13 Wall.) 679 [20 L.Ed. 666], where the court held that when a religious congregation or ecclesiastical body holding church property is a subordinate body of an organization in which there are superior ecclesiastical tribunals possessing general and ultimate power of control over church matters, the decisions of such tribunals control church property disputes to the exclusion of the civil courts. The hierarchical theory asserts that when a subordinate congregation of a hierarchical church secedes from the church, it has no right to retain church property held in its own name. Essentially, the hierarchical theory subordinates civil control of church property to ecclesiastical control of church property. Under this theory the canons and rules of a general church override general principles of legal title in the resolution of church controversies over property.

However, in the years since *Watson* v. *Jones* was decided in 1872, the United States Supreme Court has embraced another theory of resolving church property disputes, a theory initially expounded in *Presbyterian Church* v. *Hull Church* (1969) 393 U.S. 440 [21 L.Ed.2d 658, 89 S.Ct. 601]. The court there ruled that under the First Amendment a civil court is not allowed to adjudicate church property disputes by interpreting religious doctrine and practice and then relying on its own interpretation of doctrine to allocate control over church property. The opinion did not attempt to prescribe specific alternative methods a court must use to resolve church property disputes, but it noted that "neutral principles of law, developed for use in all property disputes, ... can be applied without 'establishing' churches to which property is awarded." (393 U.S. at p. 449 [21 L.Ed.2d at p 665]; see also, *Md. & Va. Churches* v.

Sharpsburg Ch. (1970) 396 U.S. 367 [24 L.Ed.2d 582, 90 S.Ct. 499].)

The use of neutral principles of law to resolve church property disputes was again approved by the United States Supreme Court in the recent opinion in *Jones* v. *Wolf* (1979) 443 U.S. 595 [61 L.Ed.2d 775, 99 S.Ct. 3020], a decision rendered subsequent to the judgment of the trial court in this cause. The issue, similar to that at bench, was described in the opinion as follows: "This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the disputes on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church." (P. 597 [61 L.Ed.2d at pp. 780-781].)

The facts were that title to the disputed church property had been held in the name of the local seceding church, that funds to acquire the property had been contributed entirely by local church members, but that the general body with which the local church was affiliated, the Presbyterian Church, operated under a hierarchical and not a congregational form of church government. The Georgia trial court examined the title deeds, statutes, corporate charters, and constitution, rules, and regulations of the general church to determine ownership and control of the disputed church property, and it concluded that under neutral principles of law no trust arose in favor of the general church, and that legal title to the property determined its ownership. Accordingly, it confirmed ownership of the disputed property in the local congregation, The Georgia Supreme Court affirmed. On review, the United States Supreme Court indicated its approval of the use of netural principles of law by state courts to settle church property disputes, and it concluded that state courts need not defer to the rulings of a church hierarchy

in settling such disputes among competing claimants: "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all form of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general — flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members." (443 U.S. at pp. 603-604 [61 L.Ed.2d at pp. 784-785].)

Jones v. *Wolf, supra,* was a five-to-four decision, with a vigorous dissent by justices who favored continued use of the hierarchical theory and deferment by civil courts to ecclesiastical authorities in church property disputes. However, such views were those of a minority and did not constitute the opinion of the court. The majority pointed out that issues of control over church property are difficult to separate from issues of doctrinal controversy over church authority, that neutral principles of law promise to free a court from the necessity of inquiry into church doctrine, polity, and practice, and allow it to rely on objective, well-established concepts of trust and property law to dispose of disputed church property.

The conclusion to be drawn from *Jones* v. *Wolf, supra,* 443 U.S. 595, is that a state, if it so desires, may resolve disputes over church property through use of neutral

principles of law without violating the First and Fourteenth Amendments. It need not adopt a rule of compulsory deference to religious authority in resolving church property disputes, even when issues of doctrinal controversy are not involved. The sources to be used to settle such disputes are the deeds to church property, the articles of incorporation of the local church, the state statutes, and the rules of the general church organizations.

We next turn to California law to determine what legal principles California courts employ to resolve disputes over church property. Fortunately, we have the benefit of the comprehensive analysis of the problem in the court's opinion written by Justice Kaufman in *Presbytery of Riverside* v. *Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 [152 Cal.Rptr. 854], a cause likewise determined subsequent to the judgment of the trial court at bench. That opinion places California law squarely in the neutral-principles camp. Its analysis of prior California cases is wholly persuasive of its conclusion that California has rejected the hierarchical theory as the basis for resolution of church property disputes and has adopted in its place neutral principles of law.

In *Presbytery of Riverside, supra,* the local church had been incorporated under California law, and title to its property was held in its own name. On the local church's secession from the general church with which it had theretofore been affiliated, the general church sought to obtain ownership and possession of the local church property, relying on those rules of the general church which state that whenever a local church has been formally dissolved or abandoned, its property reverts to the general church. The general church was organized along hierarchical lines and had been given specific authority to supervise certain business activities of local affiliated churches. The rules of the general church contained provisions, similar to those in the cannons at bench, which required a local church to obtain permission to sell or mortgage its real property. The trial court ruled in favor

of the local church. On appeal, the appellate court concluded that the hierarchical theory set out in 1872 by *Watson* v. *Jones, supra,* 80 U.S. 679 does not apply in California, that state courts in California adjudicate disputes involving ownership or right to possession of church property on the basis of neutral principles of law. The court rejected the general church's contention that the property of a local church which is part of a general hierarchical church is held in trust as a matter of law for the benefit of the general church. (P. 925.) The court also rejected the claim that the general church and its congregants were, as a matter of law, the beneficiaries of an implied trust. It noted that the statement in *Watson* v. *Jones, supra,* "trustees obviously hold possession for the use of the persons who by the constitution, usages and laws of the Presbyterian body, are entitled to that use" leaves unanswered the vital question of the identity of the persons entitled to such use. It held that the critical determinations in such causes are not determinations of law but those of fact. (P. 927.) The court then concluded that, despite the rules of the general church that on dissolution of the local corporation all property reverts to the general church, in instances of disaffiliation for reasons of doctrinal controversy legal title to church property is the controlling factor. On the basis of neutral principles of law, the appellate court upheld the trial court's ruling that ownership and possession of the disputed church property remained with the local church.

From *Presbytery of Riverside* v. *Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 [152 Cal.Rptr. 854], we conclude that California has adopted neutral principles of law as the basis for resolution of church disputes; that use of the hierarchical theory is restricted to doctrinal and ecclesiastical controversies and does not extend to property disputes; that property disputes between ecclesiastical claimants, like property disputes between temporal claimants, must be resolved by neutral principles of law. We, therefore, reject and disapprove the reliance placed by the

trial court on hierarchical theory as a means of adjudicating this cause.

III IMPLIED TRUST

Plaintiffs-respondents also rely on a theory of implied trust to support their entitlement to the property of the four seceding churches.

Under this theory the local church holds its property as trustee of an implied trust for the direct benefit of the Diocese and PECUSA and the ultimate benefit of present and future members of the Diocese and PECUSA. The theory of implied trust contemplates that members of a parish are beneficiaries of the trust only so long as they remain members of the Diocese and PECUSA. In a sense this argument is closely related to the hierarchical argument, but it appears to contemplate that the direct beneficiaries of the implied trust are institutional rather than individual. In essence, the theory of implied trust rests on the proposition that contributions and gifts to the local church are impliedly given in trust for the benefit of the general church—that the beneficiaries of such contributions are Protestant Episcopalians at large rather than members of the parish. The theory of implied trust thus rejects the named trustee (the local church) and the known beneficiaries (the local congregation) in favor of distant trustees (the Diocese and PECUSA) and unknown beneficiaries (Protestant Episcopalians in general).

A similar argument was rejected, and the implied trust theory repudiated, by the Georgia Supreme Court in the series of cases which led to the United States Supreme Court's opinion in *Jones v. Wolf* (1979) 443 U.S. 595, 599-601 [61 L.Ed.2d 775, 782-783, 99 S.Ct. 3020]. Originally, the Georgia Supreme Court sought to resolve church property disputes by evaluating the merits of the disputed doctrines and practices which had caused the controversy and ruling that a local church affiliated with a hierarchical general church impliedly holds its property in trust for the general church so long as the general church had not

substantially abandoned the doctrines it followed at the time of affiliation. (*Presbyterian Ch. v. Eastern Hts. Presbyterian Ch.* (1968) 224 Ga. 61 [159 S.E.2d 690].) (This method of resolving property disputes in hierarchical churches is sometimes referred to as the English approach. See *Jones v. Wolf, supra,* p. 599 [61 L.Ed.2d. p. 782].) But the United States Supreme Court reversed that decision, holding that by reason of the First and Fourteenth Amendments civil courts are not authorized to resolve church disputes over doctrine and practice. (*Presbyterian Church v. Hull Church* (1969) 393 U.S. 440 [21 L.Ed.2d 658, 89 S.Ct. 601].) Thereafter, the Georgia Supreme Court concluded that the implied trust theory would have to be abandoned in its entirety. (*Presbyterian Church in U.S.* v. *Eastern Heights Pres. Ch.* (1969) 225 Ga. 259 [167 S.E.2d 658]; *Carnes* v. *Smith* (1976) 236 Ga. 30 [222 S.E.2d 322]; *Jones v. Wolf* (1978) 241 Ga. 208 [243 S.E.2d 860].)

The considerations which led the Georgia court to this conclusion are evident. A civil court is ill-equipped to evaluate church doctrine and ill-equipped to resolve controversies involving the exercise of ultimate church authority. Almost inevitably, implied trust entangles the court in the disputants' conflicting views of church policy, where theological and legal principles may be closely interwoven. For example, a patriarch may be the spiritual leader and ruler of a particular church. Does this mean he also disposes of its property? Implied trust tends to involve a civil court in the intangibles of church organization, where authority intertwines with theology, and the extent of the former depends on the view take of the latter. The heart and soul of the implied trust theory is its assumption that the general church is the custodian of the true faith, that those who contribute to a local church have the tenets and doctrines of the general church in mind in making their contributions. Hence, severance of the local church's affiliation with the general church breaches faith with past contributors, a breach which brings into being an implied trust in local church property for the benefit of

the general church, which, it is assumed, conducts itself in harmony with the wishes of earlier donors. The trust must be implied, because the property has been given to the local church and not, as it might have been, to the general church.

But implied trust cuts two ways.

It may be argued, as it has been theologically argued in the controversy which underlies these four actions, that it is the general church which has strayed from the true faith, that any implied trust should properly be for the benefit of the local church.[4] How can a civil court rule on such an argument? The difficulty inherent in implied trust has been cogently pointed out in *Presbytery of Riverside* v. *Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, at pages 928-929 [152 Cal.Rptr. 854]. "[T]he effect of *Watson* v. *Jones* was the rejection or repudiation of the very doctrine that appellants appear to invoke — the implied trust doctrine holding that church property was the subject of an implied trust in favor of those who adhered to the faith of the founders of the church . . . . A concomitant of this implied trust doctrine was the necessity for the court to examine in great detail questions of religious doctrine in its determination as to which group of claimed beneficiaries continued to adhere to the 'true' faith and which had departed from the 'true' doctrine . . . . That is precisely what *Watson* v. *Jones* held a civil court is not permitted to do . . . . If the implied trust doctrine was ever the law in this state . . . , it appears to have been repudiated in *Rosicrucian Fellow* v. *Rosicrucian etc. Ch., supra,* 39 Cal. 2d [121] at pages 133-134 [245 P.2d 481], where, in rejecting an argument based on adherence to the 'original structure,' the court stated: 'The basic

[4]. The seceding churches claim to be the true Holy Catholic Church which continues the Anglican Communion in the tradition of Anglo-Catholicism.

question in a controversy such as this should be the ownership of civil and property rights as shown by the conduct and acts of the parties . . . .' "

The implied trust theory almost inevitably puts the civil courts squarely in the midst of ecclesiastical controversies, in that every dispute over church doctrine which produces strongly held majority and minority views forces the court to determine the true implied beneficiaries of the church entities involved. If the civil courts cannot properly determine which competing group is the bearer of the true faith, they cannot determine for whose benefit title to church property is impliedly held in trust. The difficulties in such a controversy are illustrated by the facts of *Watson* v. *Jones* (1872) 80 U.S. (13 Wall.) 679 [22 L.Ed. 666], where the local church, the regional church, and the general church, each contained factions of differing views, and each gave contradictory interpretations of church doctrine. We do not repeat the analysis of earlier California cases set out in *Presbytery of Riverside* v. *Community Church of Palm Springs* (1979) *supra,* 89 Cal.App.3d 910, but merely report our agreement with its conclusion that the doctrine of implied trust furnishes a poor basis for the resolution of controversies involving ownership and control of church property.

The original implied trust doctrine held that church property is the subject of an implied trust for the benefit of those who adhere to the doctrines of the founders of the church. Plaintiffs-respondents, recognizing that the original doctrine is now constitutionally impermissible under the First and Fourteenth Amendments, modify it to read that local church property is subject to an implied trust in favor of a hierarchical general church organization of which the local church has been a member. Acceptance of such a theory would lead us back to the thicket of ecclesiastical controversy, for a court would be required to deduce and infer the nature of the general church and its implied authority over the property of its affiliated

congregations. We reject the theory of implied trust, because as concluded by the Georgia Supreme Court, it is one impossible to administer. (*Presbyterian Church in U.S.* v. *Eastern Heights Pres. Ch.* (1969) 225 Ga. 259 [167 S.E.2d 658].)

Plaintiffs-respondents also draw on the analogy of charitable trusts to imply a trust by reason of the abandonment by the four seceding church organizations of their original stated purpose of operating parish churches as integral parts of the Diocese and PECUSA. Essentially, respondents argue that disaffiliation from the Diocese and PECUSA is such a departure from the purpose for which the churches were created that an implied trust arises for use of their property to further the original purpose.

We note, first, that defendants-appellants maintain there has been no departure from original purpose by them, that on the contrary it is the general church which has strayed from the original purpose of the Anglican Communion, and it is the local churches which have remained faithful to the Holy Catholic Church in the Anglican tradition. It is apparent that departure from original charitable purpose returns us once again to the forbidden field of evaluation of church doctrine. The charitable trust cases relied on by respondents are not in point. Although each of the articles of incorporation of the local churches states that its purpose is to operate a parish as a constituent part of that branch of the Holy Catholic Church now known as PECUSA, in our view nothing in such a statement so circumscribes original charitable purpose as to require forfeiture of church property on change of affiliation to another branch of the Holy Catholic Church, whether Anglo Catholic, Roman Catholic, Greek Catholic, Greek Orthodox, Russian Orthodox, or some other related rite. The cases relied on by respondents either refer to instances where the charitable trust is no longer operating as such but has sought to make itself a proprietary venture (*In re Los Angeles County Pioneer Society* (1953) 40 Cal. 2d 852 [257 P.2d 1]), where the

organization's status as a tax-exempt charity has been questioned (*Pacific Home* v. *County of Los Angeles* (1953) 41 Cal. 2d 844 [264 P.2d 539]), where the charitable trust has abandoned operations and voted to dissolve (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850 [121 Cal. Rptr. 899]), where removal of the trustees for mismanagement has been sought by the Attorney General (*Brown* v. *Memorial Nat. Home Foundation* (1958) 162 Cal.App.2d 513 [329 P.2d 118]), or where a charitable corporation seeks to devote part of its assets to enterprises adopted for profit (*Queen of Angels Hospital* v. *Younger* (1977) 66 Cal.App.3d 359 [136 Cal.Rptr. 36]). None of these factors is relevant here. No attempt has been made to change a nonprofit operation into one operated for profit. No financial mismanagement is charged. No improper use of another organization's name or false representations of nonexistent affiliation are involved. The four local churches are now operating physically the same way they did before the breach with the general church. They continue to hold religious services with the same clergy and the same communicants and on the same premises. The sole change has been severance of affiliation with the general church by reason of doctrinal differences. We think this change no more compromises charitable purpose than would a switch by a hospital from homeopathic to allopathic medicine or by a psychiatric clinic from Freudian to Jungian theory. We note, too, the opinion of the Attorney General, a nominal party to the action, to the effect that because the property in dispute is being used for ecclesiastical purposes, no violation of the general charitable trust law is involved. Respondents argue that the charitable purpose of the four local churches is to further the activities of the Diocese and PECUSA and that this purpose cannot be carried out in the absence of affiliation. We do not construe charitable purpose so narrowly, nor do we believe that affiliation with a particular charitable organization is a necessary concomitant of charitable function.

In sum, the difficulties noted by the Georgia Supreme Court in use of the implied trust theory, once evaluation of theology and doctrine has been forbidden, remain insurmountable. We conclude the implied trust doctrine provides no valid basis for transferring church property from the congregation in whose name the property is held to the general church.

IV EXPRESS TRUST

Strangely enough, both sides in this litigation conclude in their briefs that the trial court erred in rejecting the theory of express trust as a method of adjudicating the controversy. Both agree that express trust provides the most practicable method of resolving church property disputes. In reaching this conclusion the parties accept the arguments of the majority opinion in *Jones* v. *Wolf* (1979) 443 U.S. 595 [61 L.Ed.2d 775, 99 S.Ct. 3020]. And so do we.

Simply put, the issue is whether the local churches expressly hold their property in trust for the benefit of members of the Diocese and PECUSA. Did the local churches expressly agree that on withdrawal of their affiliation from the general church their property would go to the general church? At bench, the trial court found that none of the property in dispute was subject to an express trust. However, the trial court's findings, conclusions, and judgment, rendered in 1978, preceded the important decisions of the United States Supreme Court in *Jones* v. *Wolf, supra,* 443 U.S. 595, and of the California Court of Appeal in *Presbytery of Riverside* v. *Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 [152 Cal.Rptr. 854]. Thus, the trial court did not enjoy the benefit of the two most recent and controlling opinions on disposition of locally owned church property on secession of a local church from its general church. These opinions make it clear that existence of an express trust in local church property for the benefit of the general church is determinable by the same neutral principles of law used to resolve a property dispute between a local and national

body of a labor union, a trade association, a disaster relief organization, a charitable trust, or any other entity which operates locally and nationally. We therefore undertake to evaluate the facts of this cause in terms of express trust through use of neutral principles of law.

In determining the presence or absence of an express trust in specific church property a court will look at four general sets of facts: (1) the deeds to the property, (2) the articles of incorporation of the local church, (3) the constitution, canons, and rules of the general church, and (4) relevant state statutes, if any, governing possession and disposition of such property. In *Jones* v. *Wolf* (1979) *supra,* 443 U.S. 595, 600, 603 [61 L.Ed.2d 775, 782-783, 784-785], the United States Supreme Court noted approvingly that both the Georgia Supreme Court and the Maryland Court of Appeals employed these factors to resolve church property disputes.[5]

a. *Title to Church Property.* Title to the disputed church property at bench is held in the names of the local churches and, with insignificant exceptions, has always been so held.

This practice contrasts with the practice followed by some other general churches (and by PECUSA itself in the instance of missions), where title to local church property is held in the name of the general church or in the name of a bishop as trustee for the general church. Neither PECUSA nor the Diocese had any requirement that title to local church property be vested in the general church. (In this respect the situation is similar to that in *Presbytery of Riverside* v. *Community Church of Palm Springs, supra,* 89 Cal.App.3d 910, where there was no requirement that title to local church property be vested in the general church.) In this and other respects PECUSA has granted

[5] Cf. the Supreme Court of New Jersey, which continues to rely on the hierarchical theory to resolve church property disputes. (*Protestant Episc. Church, etc.* v. *Graves* (1980) 83 N.J. 572 [417 A.2d 19].)

autonomy to its parishes. For administrative convenience, it is said. But the same freedom useful for administrative convenience carries the risk that congregations which disaffiliate will take their property with them.

Under neutral principles of law if a local body affiliated with a national body holds title to property in its own name and later secedes, the national body has little basis to claim that such property is held in trust for it. (Evid. Code, § 662; Civ. Code, § 1105.) If a local organization secedes from one national entity and affiliates with another, absent other factors no claim can be laid to property owned by and held in the name of the local organization. If a Kentucky Fried Chicken franchisee secedes from its national affiliation to join a Tennessee Fried Chicken operation, neutral principles of law do not recognize any claim by the ex-franchisor against its departing franchisee's real property. In such instances valid claims may exist for breach of contract, abuse of name, false pretenses, and the like, but ordinarily no express trust arises against the property of the local organization. Under neutral principles of law the same is true of a local church organization which changes affiliation from one general church to another.

We find nothing in the title deeds of the church properties to create an express trust in favor of the general church organizations.

b. *Articles of Incorporation of the Local Churches.* For purposes of discussion we consider separately the three local churches incorporated before 1958 and the one church incorporated thereafter.

The articles of St. Matthias, incorporated in 1910, authorize the corporation to acquire and hold church property, but say nothing about disposition of church property on dissolution of the corporation or on disaffiliation from the Diocese and PECUSA. The articles of St. Mary's, incorporated in 1930, and the articles of Our Saviour, incorporated in 1944, follow the same general

form. Nothing which would create an express trust for the benefit of the Diocese and PECUSA appears in any of these articles. However, each of the articles of these three churches declares in substance that the constitution, canons, and discipline of PECUSA and the Diocese shall always form part of the articles of incorporation and prevail against anything repugnant. Such declarations are a far cry from an express trust in church property for the benefit of the Diocese and PECUSA. Nor, did either the Diocese or PECUSA, on the various dates of these incorporations, have any existing provisions in its rules for disposition of local church property on dissolution or disaffiliation of a local church. Plaintiffs-respondents interpret these general provisions in the articles of incorporation as a kind of open ended agreement by the local churches to accept in advance any and all rules and regulations which might thereafter be put in effect by the general church. We do not believe such an interpretation accords with real property law, with contract law, with corporate law, or with trust law. Such declarations of affiliation and loyalty are nothing more than expressions of present intention. We think such declarations no more restrictive of future amendments to the articles of incorporation than would be similar statements in an automobile dealer's articles that it would always distribute General Motors products and always be bound by General Motors rules and policies, or statements in a political club's articles that it would forever support the Democratic Party and be forever bound by the latter's rules and platform. A subsequent switch of affiliation by the dealer to Ford, or by the political club to the Republican Party, would, under neutral principles of law, furnish no basis for a claim of express trust by the superseded automobile manufacturer to possession of the dealer's showroom and repair shop or a claim by the deserted political party to possession of the political club's meeting premises and bank account. As in matrimony, *always* and *forever* do not preclude a change in heart and do not create

an express trust in another's property. Under neutral principles of law no express trust was created by the articles of incorporation of the three churches incorporated prior to 1958.

The articles of the fourth church, Holy Apostles, incorporated in 1963, present a somewhat different situation. Unlike the three churches incorporated earlier, Holy Apostles is identified both as an integral part and as a subordinate body of PECUSA. Again, unlike the other three churches, specific reference is made in its articles to its status as a subordinate body to PECUSA and the Diocese within the meaning of sections 9203 and 9802 of the Corporations Code, sections which, as previously noted, provide that on surrender or revocation of the charter of a subordinate body, the subordinate body shall dissolve and distribute its assets to the national body. The articles of Holy Apostles further specify that on liquidation, dissolution, or abandonment of the corporation its property will inure to the benefit of a fund organized and operated for religious or charitable purpose by the Diocese. Under neutral principles of law the articles of incorporation of Holy Apostles may place it in a different category from the other three churches in respect to disposition of church property on secession from the general church.

c. *Constitution, Canons, and Rules of the General Church.* The constitution, canons, and rules of the Diocese and PECUSA were initially silent with respect to any express trust in favor of the general church over local church property on dissolution of the local church. At the times the three earlier churches were incorporated and acquired their property, nothing in the general church constitution, canons, and rules operated to create an express trust in local church property in favor of the general church.

In 1958, however, the canons of the Diocese were amended by the adoption of Canon 10.06, which declared that on dissolution of a parish its property became distributable to the Diocese. This canon was in effect at the

time of incorporation of Holy Apostles in 1963. It is arguable that the articles of Holy Apostles incorporated by reference the then existing Canon 10.06.

d. *Statutes.* California statutory law on the relationship between local and national bodies, which includes local and general churches, was apparently silent until 1939, at which time incorporation of a subordinate body of a national body was authorized by statute and provision made for disposition of the subordinate body's assets on surrender or revocation of its charter. (Stats. 1939, ch. 148, p. 1262.) Such a provision, of course, did not affect the articles of incorporation of St. Matthias or St. Mary's, which were incorporated prior to the adoption of the statute. It could have affected Our Saviour, incorporated in 1944, but the articles of Our Saviour neither declare nor suggest that the church was being incorporated as a subordinate body to a national body.

In the articles of Holy Apostles, however, specific reference is made to these two sections of California law, and specific statement is made about the church's incorporation as a subordinate body of a national church and a subordinate body of the Diocese within the meaning of these sections. Clearly, under neutral principles of law reference to these statutory provisions is relevant to any determination of express trust.

V CONCLUSION

We now put together the foregoing elements to determine whether under neutral principles of law any express trust has been created which would preclude the local churches from keeping church property held in their own names and require them to deliver such property to the general church.

We conclude that no express trust exists in the property of St. Matthias, St. Mary's, and Our Saviour. St. Matthias and St. Mary's held title to their property in their own names, paid for it out of their own funds, did not alienate it in any express manner in their articles of incorporation,

and did not subject themselves to express restraints on their property by reason of the constitution, canons, and rules of PECUSA and the Diocese. It is true that these churches voluntarily conformed to certain financial requirements of the Diocese, such as filing annual financial reports and securing permission to mortgage real property. None of this, however, amounted to the creation of an express trust. The situation of Our Saviour is similar, except that at the time of its incorporation provisions existed under California law for incorporation of a subordinate body of a national body. However, nothing in the articles of Our Saviour purported to identify it as a subordinate body of a national body, and no reference was made in its articles to these statutory provisions. On the contrary, Our Saviour, like St. Matthias and St. Mary's, was identified as a constituent part of the Diocese. In the instance of this church, too, no express trust existed in its property for the benefit of the general church.

The last church is Holy Apostles, incorporated in 1963. That church is specifically identified as a subordinate body of a national body subject to the provisions of Corporations Code sections 9203 and 9802. It was incorporated subsequent to the adoption of Diocesan Canon 10.06 in 1958, which declares that on dissolution of a church its property shall revert to the Diocese. Its articles contain a specific provision declaring that on liquidation, dissolution or abandonment of the corporation its property will inure to the benefit of a charitable fund organized and operated for religious or charitable purposes by the Diocese. We conclude that under neutral principles of law the property of Holy Apostles was subject to an express trust in favor of the Diocese on revocation of its charter; that its disaffiliation and secession from the general church over the objection of the general church was the equivalent of revocation of its charter by the general church within the meaning of section 9802; that as a consequence constructive dissolution resulted; that thereafter on principles of express trust and pursuant to both statute and Holy

Apostles' articles of incorporation the Diocese acquired the right to secure possession and title to Holy Apostles' church property.

The judgments in the causes dealing with St. Matthias, St. Mary's, and Our Saviour are reversed (Nos. C189571, C188907, C189572); the judgment in the cause dealing with Holy Apostles is affirmed (No. C190652). All parties will bear their own costs on appeal.

Beach, J., concurred.

ROTH, P. J.—I dissent.

I accept the conclusion of my colleagues that the so-called implied trust theory, insofar as it is claimed to operate in instances involving disputes among church members over the control of church property, is unacceptable in that it requires courts to interject into the litigation their own notions respecting religious doctrine which attempted application of the theory places in issue.

I likewise am of the view that, in an appropriate case, resolution of such disputes might well be made on the basis of "neutral principles of law," which, when applied to the particular facts present, require a given result.

What concerns me here and causes me to depart from the majority is the question when the neutral principles theory should be invoked.

In my view, and that of the majority, *Jones* v. *Wolf*, in its broadest sense, stands for no more than the proposition that that theory, to the extent it does not itself in operation infringe constitutional principles, is one of several alternatives acceptable for the purpose. But whether it is the alternative best suited for application to a given case seems to me quite another matter.

Here, based upon the conclusion that the declarations respecting the relationship between PECUSA, the Diocese and the local churches as set out in the various articles of at least three of the latter "are a far cry from any express trust in church property" for the benefit of the former, the majority, in effect, looks to the fact record title is held in

the names of the appellants and, for the three referred to, grants judgment in their favor accordingly, even though the fact is alluded to that such record title may have been for administrative convenience only.

This determination, presumably, would not be subject to constitutional attack and is, then, in that sense, not objectionable.

What is curious to me, however, is that under *Jones* v. *Wolf*—that is to say insofar as constitutional integrity is concerned—the hierarchical approach would also be acceptable, but in the instant matter would require a diametrically opposite result, i.e., the result reached in the trial court.

Because that is the case, it seems to me essential both to appropriately justify the method used as well as to suggest reasons for rejecting the alternative mode of disposition.

The majority here accomplish the latter seemingly by virtue of the fact that the State of Georgia has availed itself of the neutral principles theory and upon the assertion *Presbytery of Riverside* v. *Community Church of Palm Springs* "places California law squarely in the neutral-principles camp." Without commenting on the persuasiveness of the first of these, it seems to me the second, if not inaccurate, is at least an overstatement.

Justification for use of the neutral principles approach is claimed additionally, because it is the most practicable method of resolving church property disputes. As I have indicated, whether that is so or not should depend on the circumstances.

The findings of fact of the trial court are supported with detailed and undisputed evidence with respect to every step of the long coexistence between the four parishes and respondents. Their relationship literally oozes the clear intention and ambition of each of the four parishes to severally achieve acceptance as a parish within the embrace of PECUSA with full knowledge that such acceptance meant the subordination of each to the constitution and cannons of PECUSA and the transfer of the

property of each to the Diocese of Los Angeles upon dissolution or other means of disaffiliation. The fact that one of the parishes, Holy Apostles, in one of the documents executed to consummate its relationship with PECUSA crosses enough of the t's and dots enough of the i's to restore legal title to PECUSA or the Diocese upon the occurrence of such events does not warrant the nullification of a like requirement for the other three parishes when the record shows the intention of the parties was identical in all four cases.

As I see the question, if it appears conclusively that an express trust exists in favor of one or the other of the contending parties, the judgment must reflect that fact. Where, however, such does not affirmatively appear, there would seem to me to be little to recommend resolution of the question solely on the basis of bare legal title. The better choice in such an instance, in my view, is that approach which comes closest to recognizing those factors which define the nature of the relationship of the parties and therefore are best calculated to indicate what was contemplated by them in arriving at and agreeing upon that relationship. In the case at bench, if it is concluded no express trust affirmatively appears (a proposition I likewise do not accept), the hierarchical structure of PECUSA should be, as it was in the trial court, the controlling consideration.

Finally I am convinced none of the First Amendment rights of appellants have been violated. Each parish and its congregants are free to worship as they may from time to time decide at any place legally arranged for except the

respective properties they now severally occupy. These properties they voluntarily and for a solid consideration agreed to transfer to PECUSA for use in accord with its constitution and canons.

I would affirm the judgment.

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND JOHN D. BARKER, ET AL.,

Defendants.

No. C 188907
Consolidated with

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND WILLIAM T. ST. JOHN BROWN, ET AL.,

Defendants.

No. C 189571

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND FORREST OGDEN MILLER, ET AL.,

Defendants.

No. C 189572

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND GEORGE H. CLENDENIN, ET AL.,

Defendants.

No. C 190652

JUDGMENT

These consolidated cases came on regularly for non-jury trial on May 3, 1978 in Department 34 of the Superior Court of California for the County of Los Angeles, the Honorable J. Wesley Reed, Judge presiding. Plaintiff and cross-defendant The Protestant Episcopal Church in the Diocese of Los Angeles (the "Diocese") and cross-defendant The Protestant Episcopal Church in the United States of America (the "Episcopal Church") appeared by their counsel, O'Melveny & Myers, by John G. Niles, Esq. and Diane R. Holman, Esq. Defendants and cross-complainants appeared by their counsel, Allen, Matkins, Leck, Gamble & Mallory, by Robert B. Leck III, Esq. and Brian C. Leck, Esq. Cross-defendant the Attorney General of the State of California appeared by James M. Cordi, Deputy Attorney General.

Evidence, both oral and documentary, was introduced, and oral argument was heard on May 25, 1978. Findings of fact and conclusions of law having now been duly signed and filed:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. All real and personal property, of every kind and description (except as hereinafter provided), to which defendant The Rector, Wardens, and Vestrymen of St. Mary of the Angels' Parish, in Hollywood, Los Angeles, California ("St. Mary's") held legal or equitable title as of January 23, 1977 is subject to an implied charitable trust requiring the use of such property only for the benefit of members or congregations of the Episcopal Church.

2. All real and personal property, of every kind and description (except as hereinafter provided), to which defendant The Rector, Wardens, and Vestrymen of St. Matthias Parish at Los Angeles, County of Los Angeles ("St. Matthias") held legal or equitable title as of January 23, 1977 is subject to an implied charitable trust requiring

the use of such property only for the benefit of members or congregations of the Episcopal Church.

3. All real and personal property, of every kind and description (except as hereinafter provided), to which defendant The Rector, Wardens, and Vestrymen of Church of Our Saviour, in Los Angeles, California ("Our Saviour") held legal or equitable title as of January 23, 1977 is subject to an implied charitable trust requiring the use of such property only for the benefit of members or congregations of the Episcopal Church.

4. All real and personal property, of every kind and description (except as hereinafter provided), to which defendant The Rector, Wardens, and Vestrymen of The Church of the Holy Apostles in Glendale, California ("Holy Apostles") held legal or equitable title as of January 23, 1977 is subject to an implied charitable trust requiring the use of such property only for the benefit of members or congregations of the Episcopal Church.

5. The members of St. Mary's, St. Matthias, Our Saviour and Holy Apostles who have withdrawn from the Episcopal Church and the Diocese have no interest of any kind in the real and personal property held by each of the Parishes as of January 23, 1977 (except as hereinafter provided) and have no right to the continued possession and use of such property.

6. Defendants, and each of them, are hereby enjoined and ordered to surrender title, possession and control of all such property to the Diocese, as trustee, to carry out the charitable trust purposes recognized by this judgment.

7. The individual defendants, and any persons who may have succeeded them as Rector, Wardens, members of the Vestry, or otherwise as officers and directors of the four parishes, are hereby enjoined and required to execute all documents and to do all acts and things necessary to carry out this judgment.

8. This judgment does not apply to items of personal property which the Court has found were given to the Parishes subject to a limitation or restriction clearly indicating that the donor intended the gift to be used for the local congregation only, and under no circumstances to be possessed or used by the Diocese.

9. Plaintiff shall recover its costs herein in the amount of $..... .

DATED: September 6, 1978.

J. WESLEY REED
JUDGE OF THE
SUPERIOR COURT

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND JOHN D. BARKER, et al.,

Defendants.

No. C 188907
Consolidated with

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND WILLIAM T. St. JOHN BROWN, et al.,

Defendants.

No. C 189571

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND FORREST OGDEN MILLER, et al.,

Defendants.

No. C 189572

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a corporation,

Plaintiff,

vs.

THE REVEREND GEORGE H. CLENDENIN, et al.,

Defendants.

No. C 190652

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These consolidated cases came on regularly for non-jury trial on May 3, 1978 in Department 34 of the Superior Court of California for the County of Los Angeles, the Honorable J. Wesley Reed, Judge presiding. Plaintiff and cross-defendant The Protestant Episcopal Church in the Diocese of Los Angeles and cross-defendant The Protestant Episcopal Church in the United States of America appeared by their counsel, O'Melveny & Myers, by John G. Niles, Esq. and Diane R. Holman, Esq. Defendants and cross-complainants appeared by their counsel, Allen, Matkins, Leck, Gamble & Mallory, by Robert B. Leck III, Esq. and Brian C. Leck, Esq. Cross-defendant the Attorney General of the State of California appeared by James M. Cordi, Deputy Attorney General. The Attorney General submitted a written Trial Statement at the commencement of trial and did not thereafter participate in the trial.

Evidence, both oral and documentary, was introduced, and oral argument was heard on May 25, 1978. The matters then stood submitted. The Court, being fully advised in the premises, now renders its decision as follows:

FINDINGS OF FACT

1. Cross-defendant the Protestant Episcopal Church in the United States of America (the "Episcopal Church") is and at all times relevant to this action has been a religious organization composed of Dioceses and Missionary Dioceses within the United States and throughout the world. The Episcopal Church was organized in 1789 and has remained continuously in existence since that date. The Episcopal Church is unincorporated and conducts its business affairs through an organization known as the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, which was established by an act of the Legislature of the State of New York in 1821.

2. The Protestant Episcopal Church in the Diocese of Los Angeles (the "Diocese"), plaintiff and cross-defendant in each of the four actions, is and at all times relevant to this action has been an ecclesiastical entity, in union with the Episcopal Church and subordinate to the Constitutions, Canons and General Convention of that Church. The Diocese was organized in 1896 and incorporated in 1898 as a nonprofit charitable corporation under the laws of the State of California.

3. Cross-defendant Evelle J. Younger is Attorney General of the State of California.

4. The term "parish" is used throughout these findings and conclusions in the broadest possible sense, to mean and include an ecclesiastical entity organized and functioning as a congregation of the Episcopal Church, as well as any corporate structure adopted by the parish under California law. Unless the context otherwise requires, references to a "parish" or to "St. Mary's," "St. Matthias," "Our Saviour" and "Holy Apostles" include both the present congregation and all predecessor congregations, whether formally organized as a "mission" or "parish" of the Episcopal Church, and whether incorporated or not.

5. The Rector, Wardens, and Vestrymen of St. Mary of the Angels' Parish, in Hollywood, Los Angeles, California, defendant and cross-complainant in No. C 188907, is a California nonprofit corporation organized by the congregation worshipping as the Parish of St. Mary of the Angeles ("St. Mary's"). St. Mary's was originally organized in 1918. Its application for admission into union with the Diocese as a mission was approved by the Diocesan Convention on May 14, 1919, and its application for admission into union with the Diocese as a parish was approved by the Diocesan Convention on January 28, 1931. St. Mary's remained continuously a mission or parish of the Episcopal Church in union with the Diocese and subordinate to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the

Diocese from May 1919 until the events described below occurred in January 1977.

6. Defendant John D. Barker is and has been since May 1, 1971 acting as Rector (spiritual and temporal leader) of St. Mary's. Defendant Barker was an ordained clergyman of the Episcopal Church until he was removed from the ministry of that church by the Bishop of the Diocese in August 1977. The propriety of this removal has not been challenged in this litigation and is not an issue that this Court has jurisdiction to decide.

7. The other individual defendants in No. C 188907 are the persons who were acting as Wardens and members of the Vestry (governing board) of St. Mary's at the time these cases were filed, and they are before the Court in their representative capacities.

8. St. Mary's was incorporated as a California non-profit charitable corporation on December 5, 1930. The incorporating members of the Parish certified to the following corporate purpose in St. Mary's original Articles of Incorporation:

> "Second. That the purposes for which the said corporation is formed are:
>
> "(a) To establish and maintain a Parish, which shall form a constituent part of the Diocese of Los Angeles in that branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America; and so that the Constitution and Cannons [*sic*], Rules, Regulations, and Discipline of the Church in the United States of America, and the Constitutions and Cannons [*sic*] of the said Church in the Diocese of Los Angeles, for the time being, shall unless they be contrary to the laws of this State, always form a part of its By-Laws, ordinances, Constitution, and Articles of Incorporation, and prevail against anything therein contained that may appear repugnant to said Constitutions, Cannons [*sic*], Rules, Regulations, and Discipline.

"(b) To hold all property of the association owned prior to incorporation and such as may be acquired hereafter in any manner; to transact all business relative thereto, and generally to do, perform and transact any and all acts and business, and to exercise any and all powers and privileges in any wise permitted or granted by the laws of the State of California to Religious Corporations and required by or not contrary to the Constitutions and Cannons [*sic*], Rules, Regulations, or Discipline of the said Church in the United States of America, and the Constitutions and Cannons [*sic*] of the said Church in the Diocese of Los Angeles."

St. Mary's Articles of Incorporation were not amended from 1930 until the events described below occurred in January 1977.

9. The Rector, Wardens and Vestrymen of St. Matthias Parish at Los Angeles, County of Los Angeles, defendant and cross-complainant in No. C 189571, is a California nonprofit corporation organized by the congregation worshipping as the Parish of St. Matthias ("St. Matthias"). St. Matthias was originally organized in 1905. Its application for admission into union with the Diocese as a parish was approved by the Diocesan Convention on May 15, 1907. St. Matthias has remained continuously a parish of the Episcopal Church in union with the Diocese and subordinate to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the Diocese from May 1907 until the events described below occurred in January 1977.

10. Defendant William T. St. John Brown is and has been since February 24, 1970 acting as Rector (spiritual and temporal leader) of St. Matthias. Defendant Brown was an ordained clergyman of the Protestant Episcopal Church until he was removed from the ministry of that Church by the Bishop of the Diocese in August 1977. The propriety of this removal has not been challenged in this

litigation and is not an issue that this Court has jurisdiction to decide.

11. The other individual defendants in No. C 189571 are the persons who were acting as Wardens and members of the Vestry (governing board) of St. Matthias at the time these cases were filed, and they are before the Court in their representative capacities.

12. St. Matthias was incorporated as a California nonprofit charitable corporation on August 12, 1910. The incorporating members of the Parish certified to the following corporate purpose in St. Matthias' original Articles of Incorporation:

"SECOND. That the purposes for which the said corporation is formed are:

"(a) To establish and maintain a Parish, which shall form a constituent part of the Diocese of California* in that branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America and so that the Constitution, Canons, Rules, Regulations and Discipline of the Church, now known as the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the same Church in the Diocese of California, for the time being, shall unless they be contrary to the laws of this State, always form a part of its By-Laws, Ordinances, Constitutions and Articles of Incorporation, and prevail against anything therein contained that may appear repugnant to said Constitution, Canons, Rules, Regulations and discipline of said Saint Matthias Church.

"(b) To hold all property of the association owned prior to incorporation and such as may be acquired hereafter in any manner; to transact all business relative thereto, and generally to do, perform and transact

* The reference in this paragraph to the "Diocese of California" appears to be an inadvertent mistake. The Diocese of Los Angeles was formed out of the Diocese of California in 1896.

any and all acts and business, and to exercise any and all power and privileges in anywise permitted or granted by the laws of the State of California to religious corporations, and required by or not contrary to the Constitution, Canons, Rules, Regulations or Descipoine [*sic*] of the said Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the same Church in the Diocese of Los Angeles."

St. Matthias' Articles of Incorporation were not amended in any way relevant to this litigation from 1910 until the events described below in January 1977.

13. St. Matthias adopted corporate by-laws in 1907, which contained the following provision pertinent to this litigation:

"THE CONSTITUTION AND CANONS OF THE CHURCH.

"The Constitution of the Protestant Episcopal Church in the United States of America, and the general canons thereof known as the Digest of Canons, and the Constitutions and Canons of the said Church in the Diocese of Los Angeles, as they now exist, or as they, or any of them, may be, from time to time altered or amended, are hereby adopted as and made, and shall always be, a part of these By-Laws; and whenever they, or any of them, shall conflict with any of the provisions of said By-Laws they shall, in such respects and to that extent, over-ride, supercede [*sic*] and effect the repeal of the same."

14. The Rector, Wardens and Vestrymen of Church of Our Saviour, in Los Angeles, California, defendant and cross-complainant in No. C 189572, is a California non-profit corporation organized by the congregation worshipping as the Parish of Church of Our Saviour ("Our Saviour"). Our Saviour was originally organized in 1929

under the name "Amanda Chapel." Our Saviour's application for admission into union with the Diocese as a mission was approved by the Diocesan Convention on January 29, 1930, and its application for admission into union with the Diocese as a parish was approved by the Diocesan Convention on January 26, 1944. Our Saviour remained continuously a mission or parish of the Episcopal Church in union with the Diocese and subordinate to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the Diocese from January 1930 until the events described below occurred in January 1977.

15. Defendant Forrest Ogden Miller is and has been since October 1, 1968 acting as Rector (spiritual and temporal leader) of Our Saviour. Defendant Miller was an ordained clergyman of the Episcopal Church until he was removed from the ministry of that Church by the Bishop of the Diocese in August 1977. The propriety of this removal has not been challenged in this litigation and is not an issue that this Court has jurisdiction to decide.

16. The other individual defendants in No. C 189572 are the persons who were acting as Wardens and members of the Vestry (governing board) of Our Saviour at the time these cases were filed, and they are before the Court in their representative capacities.

17. Our Saviour was incorporated as a California nonprofit charitable corporation on November 8, 1944. The incorporating members of the Parish certified to the following corporate purpose in Our Saviour's original Articles of Incorporation:

> "*SECOND:* That this is a corporation which does not contemplate pecuniary gain or profit to the members thereof; and that the purpose for which the said corporation is formed are:
>
> "(a) To establish and maintain a Parish which shall form a constituent part of the Diocese of Los Angeles in that branch of The Holy Catholic Church now known as

The Protestant Episcopal Church in the United States of America;

"(b) To hold all property of the association owned prior to incorporation, and such as may be acquired hereafter in any manner; to transact all business relating thereto, to encumber or alienate property under such conditions and restrictions as may be prescribed by law and by the Constitutions and Canons of the said Church, and generally to do, perform and transact any and all acts and business and to exercise any and all powers and privileges in any wise permitted or granted by the laws of the State of California to non-profit religious corporations as set forth in Section 597 of the Civil Code of California as it now exists or as it may be hereafter amplified, and required by, or not contrary to the Constitutions and Canons, rules, regulations or discipline of the said Protestant Episcopal Church in the United States of America, and of the said Church in the Diocese of Los Angeles;

"(c) To have and enjoy perpetual existence as such corporation;"

Article SEVENTH of Our Saviour's original Articles of Incorporation is also relevant to this litigation:

"*SEVENTH:* The Constitution and Canons, rules, regulations, and discipline of the said branch of The Holy Catholic Church now known as The Protestant Episcopal Church in the United States of America, and the Constitutions and Canons of the said Church in the Diocese of Los Angeles, for the time being, shall, unless they be contrary to the laws of this State, always form a part of the By-Laws, Ordinances, Constitution and Articles of Incorporation of this corporation, and prevail against and govern anything therein contained that may appear repugnant to such Constitutions, Canons, rules, regulations, and discipline."

Our Saviour's Articles of Incorporation were not amended from 1944 until the events described below occurred in January 1977.

18. The Rector, Wardens and Vestrymen of the Church of the Holy Apostles in Glendale, California, defendant and cross-complainant in No. C 190652, is a California nonprofit corporation organized by the congregation worshipping as the Parish of Church of the Holy Apostles ("Holy Apostles"). Holy Apostles was originally organized in 1928. Its application for admission into union with the Diocese as a mission was approved by the Diocesan Convention on January 30, 1936, and its application for admission into union with the Diocese as a parish was approved by the Diocesan Convention on January 25, 1956. Holy Apostles remained continuously a mission or parish of the Episcopal Church in union with the Diocese and subordinate to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the Diocese from January 1936 until the events described below occurred in January 1977.

19. Defendant George H. Clendenin is and has been since August 1, 1967 acting as Rector (spiritual and temporal leader) of Holy Apostles. Defendant Clendenin was an ordained clergyman of the Episcopal Church until he was removed from the ministry of that Church by the Bishop of the Diocese in August 1977. The propriety of this removal has not been challenged in this litigation and is not an issue that this Court has jurisdiction to decide.

20. The other individual defendants in No. C 190652 are the persons who were acting as Wardens and members of the Vestry (governing board) of Holy Apostles at the time these case were filed, and they are before the Court in their representative capacities.

21. Holy Apostles was incorporated as a California nonprofit charitable corporation on July 22, 1963. The incorporating members of the Parish certified to the following corporate purpose in Holy Apostles' original Articles of Incorporation:

"*Second:* The specific and primary purpose for which this corporation is formed is:

"To incorporate, under the Laws of the State of California, the existing unincorporated religious association and church known as The Church of The Holy Apostles in Glendale, California, (a subordinate body and integral unit of the Protestant Episcopal Church in the United States of America), as a subordinate body of 'The Protestant Episcopal Church in the Diocese of Los Angeles; a non-profit religious corporation,' within the meaning of Sections 9202, 9203 and 9802 of the Corporations Code of California; and to further establish, develop, maintain and operate a parish church which is and which shall continue perpetually to be, a constituent unit or part of that branch of the Holy Catholic Church known since 1789 as 'The Protestant Episcopal Church in the United States of America', pursuant to and in accordance with the Constitutions and Canons, rules, regulations and discipline of said church, except as to any Canon, rule, regulation or disciplinary provision, or part thereof, if any, which may be contrary to the laws of the State of California; and in connection with said primary purpose to exercise such of the powers granted to non-profit corporations by Section 9501 or any other section of the Corporations Code, as may be essential, incidental, necessary, proper, customary or convenient thereto, including the teaching, learning and practicing of the Christian Religion, with such charitable activities as constitute part of such teaching and practice."

The status of Parish property was specifically addressed by the incorporators in subparagraph (g) of Article SEVENTH, as follows:

"(g) The property of this corporation is irrevocably dedicated to religious, charitable, scientific or hospital purposes and upon the liquidation, dissolution or abandonment of this corporation, this corporation being

the owner, such property will not inure to the benefit of any private persons except a fund, foundation, or corporation organized and operated for religious, hospital, scientific or charitable purposes, to wit, in this case, the Protestant Episcopal Church in the Diocese of Los Angeles, but such dedication shall not be so construed as to prohibit the sale, exchange or other disposition of property for the purpose of gaining other property for use for the same or similar religious or charitable, educational or hospital purposes."

Holy Apostles' Articles of Incorporation were not amended from 1963 until the events described below occurred in January 1977.

22. Holy Apostles adopted corporate by-laws on May 19, 1963. Those by-laws in their original form contained the following language in Article I:

"This corporation is an integral subordinate unit of the Protestant Episcopal Church in the Diocese of Los Angeles and of the Protestant Episcopal Church in the United States of America.

"Pursuant to the terms and conditions of the Organization of said mission and of said parish, and in particular pursuant to Canon X, Section 48, of the Canons of the Protestant Episcopal Church in the Diocese of Los Angeles, the Constitution and canons of the Protestant Episcopal Church in the United States of America and the constitution and canons of the said church in the Diocese of Los Angeles, now or hereafter in effect, are incorporated by reference, in these By-Laws, as a basic and essential part thereof, and in case of any conflict between said constitutions and canons and any provisions of these By-Laws not contained in said constitutions and canons the provisions of said constitutions and canons hereby made part of the By-Laws of this corporation, shall prevail over such conflicting provisions. . . ."

23. St. Mary's, St. Matthias, Our Saviour and Holy Apostles will be collectively referred to hereafter as "the Parishes." All of the Parishes are located within the Diocese.

24. Since at least 1905 (before any of the Parishes were admitted into union with the Diocese) the Canons of the Diocese of Los Angeles have provided that a congregation applying for admission into union with the Diocese as a parish of the Episcopal Church must "promise and declare that the said Parish shall forever be held under the Ecclesiastical Authority of the Bishop of Los Angeles, and of his successors in office, and in conformity with the Constitution and Canons of the Church now known as the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles . . . ." Although none of the parties in this litigation were able to locate applications for admission into union with the Diocese submitted by St. Mary's, St. Matthias and Our Saviour, the Journals of Convention of the Diocese of Los Angeles recite that applications for admission were received from those three parishes and approved by the Convention. Those recitals raise a strong inference, which the Court finds persuasive, that each of the three parishes complied with the canonical requirement and made the promise and declaration described above.

25. Holy Apostles submitted to the Diocese an application for admission into union with the Diocese as a parish which contained the canonically required promise and declaration, as follows:

> "We do solemnly promise and declare on the part of all the applicants, that the said Parish shall be forever held under and conform to and be bound by, the Ecclesiastical Authority of the Bishop of Los Angeles, and of his successors in office, the Constitution and Canons of the Church now known as the Protestant Episcopal

Church in the United States of America, and the Constitution and Canons of the Diocese of Los Angeles."

26. Each of the Parishes has regularly submitted annual parochial reports to the Diocese, as required by Title I, Canon 6 of the Canons of the Episcopal Church. These annual reports contain statistical information about the congregations and financial information about the income, expenses, assets and liabilities of the parish.

27. Each of the Parishes has regularly made contributions to the Diocese, in the form of assessments and voluntary pledges, to support Diocesan activities and the missionary program of the Diocese.

28. On or about January 23, 1977 each of the four parishes, for reasons that are not relevant to the determination of these cases, renounced its prior affiliation with, and withdrew from, the Episcopal Church and the Diocese. Each parish amended its Articles of Incorporation to delete all references to the Episcopal Church and to the Diocese, and each parish asserted its complete ownership, dominion and control over all of the real and personal property of the parish.

29. The Bishop of the Diocese sent a pastoral letter to each parish, asking the members who had voted to withdraw from the Episcopal Church to reconsider their action, and advising them that their assertion of control over parish property irrevocably dedicated to the Episcopal Church "constituted willful disregard of the Church's authority and the Bishop's spiritual jurisdiction over the Parish and its property, in violation of Canon law." The correctness of this determination by the Bishop has not been challenged in this litigation and is not an issue that this Court has jurisdiction to decide.

30. Notwithstanding the Bishop's letters, the individual defendants and other dissident members of the four parishes refused to recognize that the Diocese and the Episcopal Church have any interest in the real and personal property of the Parishes. Similarly, defendants

refused to surrender control over any of this property to the Diocese or to loyal members of the Episcopal Church. This litigation followed.

31. The Court finds that the Episcopal Church is organized in an hierarchical fashion, as to both religious and temporal matters. The Church is composed of Dioceses, parishes and missions that share a common faith and doctrine, have a common ruling convocation: the General Convention of the Church, and an ecclesiastical head: the Presiding Bishop of the Church.

32. The General Convention is composed of two houses, a House of Bishops and a House of Deputies. Deputies are elected to the House of Deputies by each Diocese within the Church. The activities of the General Convention and the missionary program of the Episcopal Church are financed by assessments and voluntary pledges paid by each Diocese.

33. Each Diocese in turn has a governing legislative body, known as the Diocesan Convention, composed of representatives elected by each parish and mission within the Diocese. The activities of the Diocese and its Convention are financed by assessments and voluntary pledges paid by each parish and mission. Each Diocese has responsibility for the affairs of the Episcopal Church within a specific geographic area.

34. The convention of each Diocese elects a Bishop, who is the spiritual head and ecclesiastical authority in the Diocese. All Bishops, with certain exceptions not relevant here, comprise the House of Bishops of the national Church. The House of Bishops elects the Presiding Bishop whose election is confirmed by the House of Deputies.

35. Both the General Convention and the Convention of the Diocese of Los Angeles have adopted a Constitution and Canons, which regulate both religious and temporal matters. Each parish is required to adopt and agree to be bound by the Constitutions and Canons of the Episcopal Church and the Diocese. Each Diocese is required to adopt

and agree to be bound by the Constitution of the Episcopal Church and to recognize the authority of the General Convention.

36. The Episcopal Church has also established a hierarchical system of control over church property. Title to property used by mission congregations is normally held by the Diocese or by the Bishop of the Diocese, a Corporation Sole. When a congregation is admitted into union with the Diocese as a parish and all indebtedness on the property has been discharged, title to real property used by the parish is normally transferred to the parish corporation for administrative convenience. As a condition of achieving parish status, however, each congregation is required to adopt and agree to be bound by the Constitutions and Canons of the Episcopal Church and the Diocese. The Canons of both the Episcopal Church and the Diocese provide that real property held by a parish cannot be sold, encumbered or otherwise disposed of without permission from the Bishop and Standing Committee of the Diocese. These provisions have been consistently enforced by the Diocese throughout its history. The Diocesan Canons further provide that all parish property is irrevocably dedicated for religious purposes, and that upon dissolution of a parish

> "all properties, investments and assets shall not be distributed to any individual of the Parish but shall be conveyed to the [Diocese] to be held in trust by it or to be disposed of at its discretion."

These provisions clearly contemplate that real and personal property accumulated by a parish of the Episcopal Church may be used by the parish only for so long as it remains a part of the Episcopal Church.

37. The property which is the subject of this action is all of the real and personal property held by the Parishes as of January 23, 1977, the date upon which the Parishes severed their relationship with, and withdrew from, the Episcopal Church and the Diocese. As of that date, the

Parishes held legal title to the real property described in Exhibits 6, 32, 47 and 63. As of that date the Parishes also held certain personal property, which is described in Exhibits 7, 33, 48, 64 and 80.

38. The Court finds, however, that certain personal property was given to three of the Parishes subject to express limitations requiring that the property be retained by the parish congregation or the individual serving as Rector at the time of the gift, and with respect to St. Mary's certain personal property in the possession of the Parish was actually owned by individual members of the Parish. These items are as follows:

S. M'

A. *Property Used by the Parish but Owned by Individuals:*

1. Spanish Cast Metal Bas Relief Plaque of the Last Supper, Gold-Gilt Frame, 18" x 24".
2. 1 Oil on Canvas — "Madonna and Christ Child," Northern Italian School — 41" x 41".
3. 1 Bokhara Rug — 9' x 12'2".
4. 2 Sterling Silver Finger Oil Containers with Engraved Design.
5. 1 English Silver Bowl — 7" Diameter.
6. 1 Antique Spanish Bust, Carved, Polychromed and Gilt — 12".
7. 1 Hand Rubbing from a Church Plaque — John and Elizabeth Shelly, C-1526, Clapham, Sussex, 36" x 59".
8. 1 Black High Mass Set with Cope, Silver.
9. 1 Paymaster Check Writer Serial # 78N12332.
10. 1 Cope — white brocade with Annunciation Hood.
11. 1 Purple Cross Alb.
12. 1 Green Cross Alb.

13. 4 Amices — lined.
14. Some of the Miscellaneous Fair Linens.

B. *Property Given Subject to Express Limitation*

1. 1 Wood Sculpture — Infant St. John.
2. 16 Chapel Chairs (4 in walnut stain, 12 in natural birch).
3. 4 Spanish Style Dante Chairs.
4. 1 Cast Brass Sacristy Hanging Light — Renaissance Style with Raised Gargoyle and Scrolls on Lower Section.
5. 1 Brass Candelabrum. Four Branches (Removable to form a Single Candleholder), Hexagonal Shape Stem and Base — 53" overall.
6. 1 Green High Mass vestment, Tapestry, with Cope.
7. 4 Missal Stand Covers with Matching Tabernacle Covers, Bible Markers and Pulpit Antependia.
8. 1 Humeral Veil, 1 Canopy with matching gold cloth.

H A

Property Given Subject to Express Limitation

1. 1 Executive Desk in Office.
2. 1 Brass Tabernacle (not yet installed).
3. 1 Altar Missal.
4. 1 Canopy for Corpus Christi.
5. 1 Rood.
6. 1 Plaque, Madonna and Child, Wooden.
7. 6 Processional Candleholders, Metal with Wood.
8. 1 Green Mass Vestment.
9. 1 Violet Mass Vestment.

10. 1 Black Vestment.
11. 1 Black Cope.
12. 1 Gold Cope.
13. 1 Baptismal Font.
14. 1 Holy Water Stoup.
15. 1 Tract Rack.
16. 1 Piano.
17. 1 Library Table.
18. 14 Straight Back Chairs.
19. AB Dick Mimeograph, Model 530.
20. 1 Executive Chair in Office.

S. M

Property Given Subject to Express Limitation

1. 1 Ciborium — low with handles — Silver.
2. Lady Statue — Chapel.
3. Stations of the Cross — Chapel.
4. Tabernacle — Chapel.
5. Wedding Service Items — Antependia, Wine Carafes and Water Jugs — Rings.

39. The Court makes no finding with respect to the source of real and personal property held by the parishes as of January 23, 1977 except for those items of personal property given subject to an express limitation on their use and listed in Finding of Fact No. 38. The Court does, however, specifically reject defendants' contention that none of the property held by the Parishes was given or contributed by the Diocese or the Episcopal Church. Evidence was introduced by defendants showing that the Diocese gave financial assistance of various kinds to each of the Parishes except for St. Matthias.

40. The Court finds in all respects as set forth in the following conclusions of law. Any conclusion of law that should be a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Court has jurisdiction to decide these cases. Civil Courts are empowered to resolve church property disputes where they can do so without resolving disputed questions of religious doctrine or usage. No such questions exist here. Where such questions do exist, civil courts are required to accept as final and binding the orders, judgments and decisions of religious authorities.

2. The Episcopal Church is organized in an hierarchical fashion, as to both religious and temporal matters.

3. Each of the Parishes was organized as a subordinate, integral part of the Episcopal Church and the Diocese. Each parish is therefore part of a larger and more important religious organization, under its government and control, and bound by its orders and judgments. The Court specifically rejects defendants' claim that St. Mary's, St. Matthias and Our Saviour are not bound by § 10.06 of the Diocesan Canons because that provision was not adopted until 1958. By voluntarily remaining a part of the Episcopal Church and the Diocese after the adoption of that provision (and presumably the adoption and amendment of many other canonical provisions over the years), the Parishes impliedly consented to be bound by the Constitutions and Canons, as amended.

4. Each of the Parishes has been a charitable organization since it was originally organized, and a charitable corporation since the date of its incorporation.

5. The assets of a California nonprofit charitable corporation are held in trust for the charitable purposes expressed in the corporation's Articles of Incorporation.

6. The Articles of Incorporation of each of the four Parishes clearly demonstrate that the purpose for which each parish was organized was to establish and maintain a

parish of the Episcopal Church, in accordance with and subject to the Constitutions, Canons, rules, regulations and discipline of the Episcopal Church and the Diocese. The Court has considered extrinsic evidence offered by defendants with respect to the history and character of the Parishes and finds no persuasive evidence that the Parishes were organized or operated for any purpose other than the purpose clearly expressed in the Articles of Incorporation of each parish. The Court specifically rejects defendants' contention that the Parishes were organized for "general religious purposes."

7. The amendment by each parish of its Articles of Incorporation in January 1977 did not alter or extinguish the trust pursuant to which existing Parish property was held. Even if a California charitable corporation may lawfully amend the purposes stated in its Articles of Incorporation, it may not thereafter devote property acquired before the amendment to a new and different purpose. The Court finds that the amendments adopted by each parish accomplished a substantial change in the purposes for which the Parishes were originally organized.

8. All of the real and personal property held by each of the Parishes as of January 23, 1977 is subject to an implied charitable trust requiring the use of such property only for the benefit of members or congregations of the Episcopal Church, except for those items of personal property listed in Finding of Fact No. 38. The items of personal property listed in Finding of Fact No. 38 were given to the Parishes under limitations or restrictions indicating that such personal property was not to be impressed with a trust in favor of the Episcopal Church or the Diocese.

9. Those members of the four parishes who have withdrawn from the Episcopal Church and the Diocese, including specifically the individual defendants in these actions, have no interest of any kind in the real and personal

property held by each parish as of January 23, 1977, and have no right to the continued possession and control of such property, except for the specific items of personal property listed in Finding of Fact No. 38.

10. Plaintiff is entitled to a judicial declaration of the rights and duties of the parties consistent with these findings and conclusions, and to a permanent, mandatory injunction requiring all defendants named herein to surrender control of all real and personal property affected by this decision to the Diocese, as trustee, to carry out the charitable trust purposes recognized by this decision.

11. The Court concludes that the real and personal property held by the Parishes is not subject to an express contractual commitment requiring the use of such property only for the benefit of members or congregations of the Episcopal Church or the Diocese.

12. The Court concludes in all respects as set forth in the foregoing findings of fact, and any finding of fact that should be a conclusion of law is hereby adopted as such.

Let judgment be entered accordingly.

DATED: September 6, 1978.

J. WESLEY REED

J. Wesley Reed
Judge of the Superior Court

APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PROTESTANT EPISCOPAL CHURCH, etc., et al.,

Plaintiffs,

No. C188907
Consolidated with

vs.

THE REVEREND JOHN D. BARKER, et al.,

Defendants.

THE PROTESTANT EPISCOPAL CHURCH, etc., et al.,

Plaintiffs,

No. C189571

vs.

THE REVEREND WILLIAM T. ST. JOHN BROWN, et al.,

Defendants.

THE PROTESTANT EPISCOPAL CHURCH, etc., et al.,

Plaintiffs,

No. C189572

vs.

THE REVEREND FORREST OGDEN MILLER, et al.,

Defendants.

THE PROTESTANT EPISCOPAL CHURCH, etc., et al.,

Plaintiffs,

No. C190652

vs.

THE REVEREND GEORGE H. CLENDENIN, et al.,

Defendants.

ORDER

Pursuant to the authority of Code of Civil Procedure Section 662 the Court orders the Findings of Fact changed in the following respect by striking Finding of Fact No.

39, beginning at page 27, line 24 of the Findings of Fact and Conclusions of Law, and by substituting in its place a new Finding No. 39 as follows:

"39. Except for financial assistance given by the Diocese to St. Mary's , Our Saviour and Holy Apostles (as shown in Exhibits E, F, G, H, BBB, CCC, DDD, HHHH, IIII, JJJJ, and LLLL), all of the real and personal property held by each of the four parishes as of January 23, 1977 was derived from and paid for by contributions to each parish from present members of the parish, former members and non-member benefactors other than the Diocese. All of the loans to Holy Apostles shown in Exhibit HHHH were repaid by the parish in or before 1973."

IT IS SO ORDERED.

DATED: November 13, 1978.

J. WESLEY REED
Judge of the Superior Court

APPENDIX E

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES et al.,

Plaintiffs and Respondents,

vs.

JOHN D. BARKER et al.,

Defendants and Appellants.

2 Civil No. 59019

March 2, 1981

The Court:

Petition for rehearing of Protestant Episcopal Church is denied.

I would grant:

Roth, P. J.

The Court:

Petition for rehearing of Holy Apostles Church is denied.

Clay Robbins, Clerk

APPENDIX F

CLERK'S OFFICE, SUPREME COURT

4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

APRIL 22, 1981

I have this day filed Order _____

_____

HEARING DENIED

_____

_____

_____

_____

In re: 2 Civ No. 59019 Protestant Episcopal Church vs. Rev. Barker.

Respectfully,

Clerk

APPENDIX G
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, et al.,

Plaintiffs and Respondents,

vs.

JOHN D. BARKER et al.,

Defendants and Appellants.

2 Civil No. 59019

Remittitur

On Appeal from the Superior Court in and for the County of Los Angeles

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The above-entitled cause having been fully argued, submitted and taken under advisement,

IT IS ORDERED, ADJUDGED AND DECREED *by the Court that* the judgments in the causes dealing with St. Matthias, St. Mary's and Our Saviour are reversed (Nos. C189571, C188907, C189572); the judgment in the cause dealing with Holy Apostles is affirmed. (No. C190652). All parties will bear their own costs on appeal.

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on January 30, 1981, and now remaining of record in my office.

Dated: May 1, 1981

Clay Robbins, Jr., Clerk

Office-Supreme Court, U.S.
FILED
AUG 25 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-140

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES AND THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA,

Petitioners,

VS.

THE REVEREND JOHN D. BARKER, et al.,

Respondents.

On Petition For Writ of Certiorari To The Court of Appeal for the State of California Second Appellate District

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Was the lower court's use of the neutral principles approach "retroactive," from a constitutional standpoint, even though such is consistent with previous California cases, petitioners took no action to assert their purported hierarchical control, and the "hierarchy" approach is inapplicable because the identity of the governing church body is at least a matter of substantial controversy?

2. Can a State reject the so-called "implied trust approach" on grounds that such would require civil courts to address and resolve what are essentially religious issues?

3. Can a State apply the neutral principles approach, in terms of inquiring whether an express trust exists in favor of the general church, even if the general church is "hierarchical" with regard to ecclesiastical matters?

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Maryland and Virginia Eldership v. Church of God at Sharpsburg, 241 A.2d 691, 249 Maryland 650 (Md. 1968), appeal dismissed, 396 U.S. 367 (1970) 10, 11, 13

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Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal.App.3d 910 (1979), cert. denied, 444 U.S. 974 (1979) 7, 9, 12

Protestant Episcopal Church in the Diocese of New Jersey v. Graves, 391 A.2d 563, 161 N.J. Super. Court 230 (1978), aff'd, 417 A.2d 19, 83 N.J. 572 (1980), cert. denied, 101 S.Ct. 954 (1981) 14

Rosicrucian Fellowship v. Rosicrucian Church, 39 Cal. 2d 121 (1952) 8

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872).....7, 8, 12

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No. 81-140

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES AND THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA,

Petitioners,

VS.

THE REVEREND JOHN D. BARKER, et al.,

Respondents.

On Petition For Writ of Certiorari
To The Court of Appeal for the State of California
Second Appellate District

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

This brief is being filed on behalf of respondents St. Mary of the Angels' Parish, St. Matthias Parish, and Church of Our Saviour, the three local churches which prevailed in the court below, in opposition to the petition for certiorari filed by The Protestant Episcopal Church in the Diocese of Los Angeles and The Protestant Episco-

pal Church in the United States of America, hereafter referred to as "petitioners."[1]

Both before and after the time they disaffiliated from the Diocese and the national church in 1977, St. Marys, St. Matthias and Our Saviour were all duly-constituted California nonprofit corporations. Each was the sole legal owner of its real property, with the relevant deeds showing no interest whatsoever in either the Diocese or the national church. Each maintained exclusive possession and control of its property, both real and personal, and substantially all the property at issue was paid for by their present members, former members, and non-member benefactors other than petitioners. Moreover, and as will be discussed in greater detail below, each has had a long history of autonomy and independence in matters concerning local church property.

A. St. Marys

St. Marys was incorporated under California law as a nonprofit religious corporation in 1930. It was originally founded by the Reverend Neil Dodd, the so-called "Padre of Hollywood", who began the mission as a storefront operation in Hollywood, California. Early worship services were held in a small church building located on New Hampshire Avenue, commonly known as the "Little Church Around the Corner." According to an early history of the mission, Fr. Dodd "became the unofficial spiritual guide of the whole movie colony—Jew, Protestant, and Catholic."

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[1]We take no position with regard to the petition for certiorari filed by the Rector, Wardens and Vestrymen of the Church of the Holy Apostle in Glendale, California, Docket No. 81-141.

Shortly after it was incorporated, St. Marys received the land on which the church now stands as a gift from one of its parishioners. The deed made no reference whatsoever to the Diocese or the national church, nor was any type of reversionary interest created in their favor. The deeds to the other three parcels of land subsequently owned by St. Marys likewise make no mention of the Diocese or the national church.

Except for very modest contributions during the early years, neither the Diocese nor the national church ever provided any financial support to St. Marys. Nor did the Diocese or the national church contribute anything toward the purchase of any of St. Marys' real property. By contrast, between 1920 and 1974 St. Marys contributed approximately $161,000 to the Diocese.

On January 23, 1977, the membership at St. Marys overwhelmingly approved, by a vote of 80 to 7 with one member abstaining, an amendment to St. Marys' articles of incorporation which deleted all references to the Diocese and the national church. From a functional standpoint, however, St. Marys continued to hold religious services, maintain its property, and otherwise conduct its spiritual and temporal affairs in exactly the same manner as before.

B. St. Matthias

St. Matthias was established as a mission in 1905 by an Anglo-Catholic group of parishioners who had been brought up in the tradition of the Oxford Movement. Shortly thereafter, they purchased the property with their own funds,

and in 1907 St. Matthias was formally incorporated as a nonprofit religious corporation.

At no time in its history did St. Matthias receive any financial assistance of any sort from the Diocese or national church, nor did either ever contribute any funds to St. Matthias for the purchase of any of its real property. On the other hand, St. Matthias contributed approximately $127,000 to the Diocese over the years.

None of the deeds to St. Matthias' real property contains any language showing any interest in favor of the Diocese or the national church, and in each case the sole legal owner of record is the local parish corporation. Neither the Bishop nor anyone from the Diocese was ever a vestryman at St. Matthias, nor ever received notice of vestry meetings. St. Matthias hires its own employees without review by the Diocese, and the vestry makes all decisions regarding how the parish funds should be invested, whether stock should be sold or kept, and so forth. Like St. Marys and Our Saviour, St. Matthias has been fully independent from the Diocese and the national church in secular matters and all matters relating to local church property.

In early 1977 the membership at St. Matthias unanimously approved a resolution, with two abstentions, to delete all references in St. Matthias' articles to the Diocese and the national church. However, it continued to operate as a nonprofit corporation in the same manner and at the same location as before.

C. Our Saviour

Our Saviour was organized as a mission in 1930, with early services being held at a location known as The Community Church of Carthay Center in Los Angeles. It was incorporated in 1944 as a nonprofit religious corporation under California law.

Our Saviour has long been financially independent from the Diocese, with parish expenses being met entirely by voluntary contributions from its members. At no time did the Diocese or national church render any substantial financial assistance to Our Saviour, even during the time it was a mission, while Our Saviour has contributed approximately $50,000 to the Diocese during its history. Our Saviour even made modest financial contributions to the Diocese for more than five years during which time its rector was required to be a "part-time priest" because of the local church's precarious financial condition. Still, the Diocese provided no financial assistance in return. At all times the vestry at Our Saviour has been in exclusive charge of the temporal affairs of the corporation, including the management and control of its real and personal property.

In early 1977 the vestry and membership at Our Saviour unanimously approved a resolution severing all its ecclesiastical ties to the Diocese and the national church. Despite these formal changes, the membership continued to meet and conduct their spiritual and secular affairs in the same manner as in the past.

In a comprehensive and well-reasoned decision the California Court of Appeal, Second District, held that St. Marys, St. Matthias and Our Saviour were entitled to re-

tain possession of their local church property under neutral principles of law, following previous California decisions in this area and this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979). Petitioners sought a rehearing, which was denied. Petitioners then sought a hearing in the California Supreme Court, raising arguments which were virtually identical to those they urge in their present petition, including their argument that the lower court's decision "overturned more than 80 years of settled California law." That court unanimously denied a hearing.

For the reasons discussed below, this Court should also deny the present petition.

SUMMARY OF THE ARGUMENT

Petitioners' main argument is that the lower court's decision is a "retroactive" application of new principles which has undermined petitioners' careful reliance on prior law. There are at least three major problems with this argument. First, a proper analysis of the earlier California cases shows that no "new principles" are in fact involved. Second, petitioners' own evidence shows that they were well aware of the independence of local churches in property matters, yet took no effective steps to assert any purported "hierarchical" control. Third, the hierarchy approach could not in any event be used in this case since the identity of the governing body in the Episcopal church, if any, is at least a matter of "substantial controversy."

Similarly, the lower court properly rejected the so-called "implied trust" approach because the basic question it

asks—whether contributions were made to the general church regardless of doctrine, or the local church regardless of structure—would necessarily require a court to address what are essentially theological issues.

Finally, the reasoning in *Jones v. Wolf* permits California to find in favor of a local church under neutral principles of law, in terms of asking whether there is any express trust in favor of the general church, even if the general church is "hierarchical" in ecclesiastical matters. This is constitutionally proper even though other states may have chosen to follow some other approach.

For all these reasons the petition should be denied.

ARGUMENT

1. The Lower Court's Decision Is Not "Retroactive", Petitioners Took No Action Despite Their Knowledge of Local Church Autonomy, and the Hierarchy Approach Is in Any Event Not Applicable

The primary thrust of petitioners' argument is that the lower court's decision has "retroactively" overturned more than 80 years of settled California law; that petitioners had relied on the assumption that the "hierarchy" approach as set forth in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872), would apply; and that the hierarchy approach could constitutionally be applied in this case. None of these premises is correct.

First, the true history of California law in this area is set forth in *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal.App.3d 910 (1979), *cert. denied,* 444 U.S. 974 (1979). In that case the court carefully analyzed

prior California cases since *Watson v. Jones*, including the specific authorities upon which plaintiffs rely,[2] and found *no support* for the basic principle of the hierarchy approach: that the property of a local church which is part of a general church having a hierarchical structure is held in trust for the general church. In fact, the court reached exactly the opposite conclusion:

> Thus, properly read, *Wheelock* stands for the proposition that the property of a local church, *even one that is part of a general church organization of hierarchical structure*, is held in trust by the religious nonprofit corporation for the benefit of the *local* church congregation. 89 Cal.App.3d at 927 (emphasis addded).

Contrary to petitioners' assertion, then, the hierarchy approach has not been "consistently followed" in California, nor do the earlier California cases cite *Watson* in support of a trust in favor of the general church.

Second, in reviewing petitioners' one-sided historical narrative, one point is abundantly clear: for over 100 years petitioners knew that their supposed ecclesiastical authority did not give them any enforceable legal rights in the *property* of local churches.[3] Yet they either did not or could not take any effective steps to assert their purported "hierarchical" control. Unlike churches which are truly hier-

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[2] *Committee of Missions v. Pacific Synod*, 157 Cal. 105 (1909); *Wheelock v. First Presbyterian Church*, 119 Cal. 477 (1897); *Horsman v. Allen*, 129 Cal. 131 (1900); and *Rosicrucian Fellowship v. Rosicrucian Church*, 39 Cal.2d 121 (1952).

[3] None of the evidence upon which petitioners rely in this regard was admitted at trial. In the unlikely event that this Court does grant certiorari herein, we respectfully reserve the right to present controverting evidence on this issue.

archical, for example, petitioners never took the simple and straightforward step of requiring local churches to include express trust language in their articles of incorporation or reversionary language in their deeds.

Certainly the things petitioners did do, on the other hand, fall far short of creating a trust. The fact that the Diocese incorporated and thereby obtained legal capacity to sue, for example, is obviously not sufficient. And while the Diocese may in 1878 have considered a regulation to require all existing parishes and missions to convey their real property to the Bishop, *no such regulation was ever adopted.* A comparable situation was presented in *Riverside,* where the general church considered—but did not adopt—a proposal to require all local churches to amend their articles to declare a trust in favor of the general church. 89 Cal.App.3d at 932.

In this regard it should also be noted that the Diocese knew full well how to create an express trust when that was the parties' true intent. For example, in Canon X, section 9.15 of the Diocesan Canons, the following language appears:

> [Upon incorporation of a parish] the Diocesan Corporation shall convey to the Parish Corporation successor of such mission any and all property then held in trust for such Mission, *and the trust with respect to any such property, shall then terminate....* (emphasis added)

It is undisputed that no similar provision of the constitution of either the Diocese or the national church purports to create an express trust in local church property.

In addition, the one specific provision of the Diocesan Constitution which by its terms does apply to the particular situation in this case—Article XIX—specifies that the penalty for "persistent disregard" of Diocesan Canons is severance of the *connection* between a local church and the Diocese, not a forfeiture of local church property.

It should also be noted that over seven full years before the disputes in this case arose, this Court made the following observation in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969):

> Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions. 393 U.S. at 449.

This petitioners simply did not do.

Third, petitioners' retroactivity argument also fails because the approach they claim the lower court should have used—hierarchy—could not constitutionally have been applied in this case. The reason is that while the hierarchy approach may in certain instances be consonant with the First Amendment, it may *not* be applied in cases where the identity of the governing body or bodies within a church is a matter of "substantial controversy." *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 369-70 (1970). Without belaboring the point, that is certainly true in the present case, as the Episcopal Church at most is hierarchical with

regard to ecclesiastical matters, but not with regard to church property.[4]

In conclusion, if any *one* of petitioners' three premises is wrong, their retroactivity argument collapses. As shown above, all three are incorrect: the lower court's decision is fully consistent with prior California law; petitioners took no action to assert their purported hierarchical property rights; and the First Amendment in any event precludes the use of the hierarchy approach in this case.

2. The Lower Court Properly Rejected the So-called "Implied Trust" Approach As Requiring an Inquiry Into Ecclesiastical Questions

Petitioners' second argument is that the lower court improperly rejected the so-called "implied trust" approach even though, as the lower court noted, such necessarily involves an inquiry into ecclesiastical matters. Initially, we note that in large part the lower court was simply following the lead of the Georgia Supreme Court, which also rejected the implied trust approach, in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial*

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[4]"A denomination need not adhere strictly to any one of the three polities mentioned—episcopal, presbyterian or congregational. It may avail itself of parts of one, two or even all three. An example of the last possibility is the Protestant Episcopal Church in the Diocese of Maryland, which has a bishop as part of an Episcopal polity, but is governed on a diocesan level by the bishop and the Convention consisting of the clergy and certain elected laymen (a characteristic of the presbyterian polity), but . . . the control of parish or local church property is in the hands of the Vestry or trustees for the local church or parish . . . ." *Maryland and Virginia Eldership v. Church of God*, 241 A.2d 691, 699, 249 Maryland 650 (Md. 1968), *appeal dismissed*, 396 U.S. 367 (1970).

Presbyterian Church, 393 U.S. 440 (1969), 167 S.E.2d 658 (Ga. 1969), *cert. denied*, 396 U.S. 1041 (1970).

Notably petitioners also fail to distinguish between two different interpretations of the "implied trust" approach. First, if this approach means that a trust necessarily exists in favor of a general church which is hierarchical in nature, without further inquiry, it is for all practical purposes identical to the *Watson* approach. As discussed above, however, California has rejected this type of "structural" solution. *Presbytery of Riverside, supra*, 89 Cal.App.3d at 929 ["The basic question in a controversy such as this should be the ownership of civil and property rights as shown by the conduct and acts of the parties. A classification based on a formula is not of much assistance . . . ." (citation omitted)].

Alternatively, if the implied trust approach means that courts must attempt to determine, without benefit of documents which definitively resolve the matter, to whom church members intended their contributions to go, such inevitably would require an inquiry into ecclesiastical questions. Simply stated, where the national church and a local church have gone in different theological directions, there is no way for a court to decide, other than by identifying the "true" church, whether such contributions were intended to foster a particular religious structure, *i.e.*, the general church, regardless of which theological direction it takes; or a particular set of religious beliefs, regardless of what structure is involved. As the lower court noted, an implied trust necessarily cuts two ways. (Appendix at 18a) For these reasons the lower court properly noted that this

approach cannot serve as a constitutional method for resolving church property dispute.[5]

3. A State May Resolve a Church Property Dispute in Favor of a Local Church Under Neutral Principles of Law, Asking Whether There Is an Express Trust in Favor of the General Church, Even if the General Church Is "Hierarchical" in Ecclesiastical Matters

The lesson of *Jones v. Wolf* is that the neutral principles approach, at least in general outline, is consistent with applicable constitutional principles as expressed in the First and Fourteenth Amendments. Further, and as the Court previously noted in *Maryland & Virginia Eldership v. Church of God at Sharpsburg, Inc., supra,* 396 U.S. at 368, a State may adopt any one of various approaches, including the neutral principles approach, so long as it involves no consideration of ecclesiastical matters.

This being so, the lower court's use of neutral principles of law to resolve this dispute did not violate petitioners' constitutional rights, nor even raise any new constitutional issue. In this regard the fact that certain other states have continued to adhere to the hierarchy approach, as petitioners note, is beside the point. Consistent with its prior judicial decisions in this area, California has chosen to resolve church property disputes under neutral principles of

[5]All three members of the lower court, including Justice Roth in dissent, agreed that the implied trust approach should be rejected for this reason. In this regard Justice Roth stated that "I accept the conclusion of my colleagues that the so-called implied trust theory, insofar as it is claimed to operate in instances involving disputes among church members over the control of church property, is unacceptable in that it requires courts to interject into the litigation their own notions respecting religious doctrine which attempted application of the theory places in issue." (Appendix at 29a)

law, namely, by asking whether all the evidence, construed in secular terms, reveals any express trust in favor of the general church. The answer to that question in the present case, according to the California Supreme Court, the California Court of Appeal, *and* the trial court, is "no."[9]

CONCLUSION

For all of the foregoing reasons, petitioners' writ of certiorari should be denied.

Dated: August 20, 1981.

Respectfully submitted,

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[9]In addition, the Attorney General of the State of California, who was named as a defendant in his statutory capacity of supervising the operation of charitable trusts, took no position on the merits because, among other things, "No party to this litigation takes the position that church assets may be diverted from church purposes, and in fact both parties take the position that church assets are held in trust exclusively for church purposes."

This Court has also spoken clearly and often in this area in recent years. Most recently, in January of this year it denied certiorari in the case entitled *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 391 A.2d 563, 161 N.J. Super. Court 230 (1978), *aff'd*, 417 A.2d 19, 83 N.J. 572 (1980), *cert. denied*, 101 S.Ct. 954 (1981).